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SUMMARY RECORD OF THE 1221st MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 7 August 1997, at 10 a.m.

Chairman: Mr. BANTON

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Thirteenth periodic report of Denmark (continued)

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Thirteenth periodic report of Denmark (continued) (CERD/C/319/Add.1; HRI/CORE/1/Add.58)

1. At the invitation of the Chairman, the delegation of Denmark resumed its place at the Committee table.

2. THE CHAIRMAN suggested that the Danish Government request the United States Government to declassify certain sensitive information contained in a report on Greenland during the cold war, in a bid to shed light on some of the circumstances surrounding the relocation of the Inuit population in 1953.

3. Ms. ANDERSEN (Denmark), referring to labour questions and replying to Mr. Wolfrum's query about the concept of citizenship in the Act on Prohibition against Differential Treatment on the Labour Market said that, under article 1, paragraph 2 of the Convention, a State party was entitled to distinguish between its citizens and foreigners, providing such treatment did not run counter to the principle enshrined in article 1, paragraph 1. Employers in Denmark might prefer to hire a Danish citizen over a foreign national but that could lead to indirect discrimination and fall foul of the Act. The public employment service ruling that citizenship should be of no importance in ordinary jobs involving public job exchange was testimony to the Government's serious approach to the question of racial discrimination and the effective prohibition of direct and indirect discrimination under the Act.

4. Special measures referred to by some members were exceptions to the Act on Prohibition against Differential Treatment on the Labour Market and consequently regarded by victims of discrimination as a violation of the Act. Special measures were permitted, therefore, only if established by law or reference thereto. There was, for instance, provision for public projects to promote equal treatment. Employers could apply for exemption from the Act if the employee's race was of decisive importance to the performance of the job. The Ministry of Labour had informed the Danish Refugee Council (DRC) of the procedure, and formal dispensation had been granted.

5. While positive measures were not allowed at the ordinary workplace in the public and private sectors employers were nonetheless allowed to advertise their equal opportunity policies and encourage persons of foreign origin to apply for positions.

6. Reacting to Mr. van Boven's warning that the Danish Government might take its equal opportunity policy a step too far, she said that the Government was aware that it was important to study further the question of qualifications in an attempt to curb discrimination resulting from conventional ways of formulating job requirements. As to the emphasis on proficiency in Danish, requiring proficiency where it was not directly important to performance of the job could constitute a form of indirect discrimination and some employers did abuse the requirement.

7. Greenland and the Faroe Islands had not been covered under the Act because combating racial discrimination came under the competence of the authorities in both territories and it was their prerogative to decide how to implement the Convention.

8. Ms. HOLT (Denmark) said in response to Mr Valencia Rodriguez' enquiry about results of the labour authorities' efforts that the Ministry of Labour, along with allied agencies, including the Directorate General for Employment Placement and Vocational Training (AMS) and local labour exchange offices (AFs), had been tackling the problem of high unemployment among foreign nationals. The AFs programmes aimed at ethnic minorities followed guidelines set forth in a 1995 AMS circular proscribing the practice of discrimination by AFs and urging them to negotiate with employers imposing discriminatory job requirements and deny them further assistance if they refused to change their position. Since the publication of the circular, problems had been experienced, especially in the greater Copenhagen area, prompting a revision of the guidelines. In 1996, consultants had been assigned to the AFs to provide employment and educational counselling to ethnic minorities and information on ethnic minorities to AF staff.

9. In 1996, the labour authorities as a whole had increased their efforts significantly over previous years and provided the necessary additional financial and human resources. An action plan for 1997 had been put in place for Copenhagen where half of unemployed immigrants lived. It included a survey of educational qualifications among the minority communities and a special project for potentially marginalized persons aged 25-30, language testing, contacts with employers and job rotation schemes. A special project for unemployed Turkish immigrants, most of them women, had been implemented.

10. The action plan aimed at removing barriers to the employment of immigrants and refugees had formally ended in May 1997 and had been largely effective. The plan had been subsumed under the general policy of combating unemployment among foreigners, which was also successful for the most part. Regional labour policy makers had become more aware of the problems faced by foreigners and had been planning accordingly. Special measures were merely a supplement to the ordinary measures against unemployment in general.

11. High levels of unemployment among foreigners could be explained by a lack of necessary skills and discrimination. Some immigrants, in particular those who had arrived in the early 1960s - notably from Turkey and Pakistan - had not kept pace with the evolution in labour skills and technology since they had first begun to work in low-skilled jobs. Education was, therefore, a key issue for minorities and in the previous 10 years they had managed to keep pace with the rest of the population although young Turks still lagged behind. The help of the Imams was enlisted in encouraging youths to complete their education and improve their employment opportunities. Special programmes targeting Turks, Pakistanis and people from the former Yugoslavia were used as a springboard for a wider policy, geared largely to training and work experience, of improving employment opportunities for immigrants, improving staff expertise and changing attitudes on the labour market towards hiring immigrants. Multicultural management was being introduced in the labour market and the Ministry itself was experimenting with ethnic personnel management.

12. Turning to the question of the "icebreaker arrangement", she explained that it was run by the Ministry of Trade and restricted to highly educated ethnic immigrants partly because of the success of a similar project for all highly educated unemployed persons. The Ministry of Labour, for its part, had been implementing similar projects aimed at all persons, including immigrants. The "icebreaker arrangement" was restricted to enterprises with up to 250 employees, because such businesses were in the majority in Denmark and hence should be informed of the contribution highly educated immigrants had to offer.

13. Mr. KLINGENBERG (Denmark) advised that his delegation had brought an English translation of the Act on Prohibition against Differential Treatment on the Labour Market for the Committee's perusal.

14. Ms. CHRISTENSEN (Denmark) quoted article 19, paragraph 6, section 2 of the Danish Aliens Act - which stipulated that a refugee's temporary residence permit could not be revoked if the refugee had lived in Denmark for over three years - in response to Mr Wolfrum's fear that the non-repatriation of Bosnian refugees might play into the hands of those who practised ethnic cleansing. The integration programme for Bosnian refugees applied only to those who no longer benefited from the special temporary protection rules. Most of the approximately 17,000 Bosnian refugees in Denmark had obtained ordinary refugee status in 1995. The Ministry of the Interior had received two reports on Bosnian refugees granted refugee status and on refugees and immigrants in general in May 1997. Compiling data on all the initiatives aimed at immigrants and refugees and conducting a needs analysis was a long and arduous process. Non-government members of the Integration Committee for Bosnian war refugees, which had 27 members in all, included representatives from a wide range of NGOs and immigrant organizations. Since the inception of the Committee, many initiatives had been launched, including a programme dealing with the large number of Bosnian refugees.

15. Regarding the concept of a "minimum standard", Denmark maintained its policy of equal treatment of refugees and immigrants. They received the same social welfare benefits, housing and access to education as Danish citizens. The Danish Refugee Council and municipalities were bound by Government to ensure that they were given equal treatment and that the money allocated through the reception programme was spent appropriately.

16. Ms. HOLT (Denmark) enumerated some of the minimum standards set forth in the draft bill on the reception of refugees and immigrants in Denmark to be passed at the current session of Parliament in 1997 and contained in the Integration Committee's report. They included the requirement that the responsible body should provide information and assistance to persons with refugee status in respect of administrative formalities, housing and Danish society and culture; offer refugees interviews and discussions on their concerns; drew up a report on the background of each refugee and an individual education or employment plan; provide job training and education; and conduct a follow-up interview at the end of the 18-month reception programme. Comments from the various private and public bodies to which the report had been addressed were now awaited.

17. The statement under paragraph 67 of the periodic report that the question of immigrants and refugees on the housing market no longer had a specific priority did not mean that due attention was not still being given to housing for immigrants and refugees. The reference signalled the shift in the focus of the Urban Committee from the view that the predominance of immigrants in the urban areas was a problem, towards a broader, social approach to urban problems which including community upgrading projects aimed at stimulating employment, cultural life, social networks and urban renewal.

18. On the implementation of the European Year against Racism, she said that the invitation to take part in competitions within the framework of the Year had been extended to artists, professional television producers and journalists. Artists from ethnic minorities would also be invited to compete on an equal footing with Danes and competitors were guaranteed impartial treatment. Thus far, the response had been very positive.

19. Regarding the question of remedies in relation to article 6 of the Convention a new Act on the Board for Ethnic Equality had been adopted by the Parliament in June 1997. The new Board would not deal with individual cases but was entitled to make statements on general matters concerning racial discrimination, which would not be binding but could address cases of differential treatment in both the public and private spheres. The Board could also request a change of practice or code of conduct, as well as propose solutions and mediate but it was not authorized to receive complaints. No consideration had been given to whether such an agency would be created in the long term along with local mediation units. The Ministry of the Interior felt that further consideration should be given to these issues and, although it was a complex matter, that should not delay the necessary adjustments to the Board's activities.

20. There was a strong tradition in Denmark of involving NGOs and ethnic minority organizations in policy making and project implementation. Indeed substantial sums had been allocated for ethnic organizations promoting improved relations between Danes and ethnic minorities. Representatives of ethnic minorities participated in most government bodies or committees dealing with ethnic minorities. The Integration Committee proposed a strengthening of that tradition with the setting up of immigrant councils in municipalities in which there were more than 50 persons with an ethnic background.

21. Mr. KLINGENBERG (Denmark), by way of background on the Radio Oasen case, said that a decision by the local council in September 1996 to revoke the licence of Radio Oasen because of its broadcast of a reading from Mein Kampf had been overturned by the Local Radio and Television Committee in November 1996 on the grounds that the book was available in libraries and most bookshops, and that the excerpt had been unedited and read in an undramatic way and should be seen in its historical context; the broadcast had not therefore been deemed to have violated the licence conditions under section 226 b of the Penal Code. In another ruling in July 1997, the Committee had reversed the local council's rejection of the station's licence renewal application, stating that as there had been no subsequent ruling that its programmes had violated anti-racist rules and regulations, the Board could not legally reject the application.

22. Mr. HJORTENBERG (Denmark), replying to questions raised by Mr. van Boven about the Danish Prosecution Service, said that it was part of the Ministry of Justice. The Minister of Justice could give general and specific instructions to a Director of Public Prosecutions but rarely did so in specific cases, and directors of the Public Prosecution Service could give general and specific instructions to local and regional public prosecutors. The basic principles of prosecution, referred to by Mr. de Gouttes, were enshrined in the Danish Administration of Justice Act; detailed regulations ensured that prosecutions were carried out in a fair and objective manner.

23. The Danish Prosecution Service was aware of Denmark's obligations under the Convention and in particular that measures taken in accordance with article 4 should have due regard to the rights established in article 5, notably the right to freedom of opinion and expression.

24. Prior to 1995, prosecutors had acted with some restraint in cases involving section 226 b of the Penal Code on account of opinions expressed during the passage of the bill through Parliament. The new subsection 2, added in 1995, covered cases involving racist propaganda. In the light of that amendment, the Director of Public Prosecutions had issued new instructions in September 1995 aimed at ensuring a uniform prosecuting practice, referred to in paragraph 27 of the report, whereby the Prosecution Service should report comprehensively on the way in which different cases were handled.

25. Between September 1995 and July 1997, a total of 38 cases had been referred to the Prosecution Service under section 266 b. Only five had resulted in prosecution: one involving propaganda had resulted in an acquittal, another had not yet been tried, and three, which had not been mentioned in the report, had led to convictions. Those three latest convictions were important. Two cases had concerned verbal attacks against the race and colour of individuals in public places and in each case the courts had imposed fines. The third case, concerning a letter to the editor of a newspaper accusing immigrants of murder, theft and rape, had resulted in its author being fined. A case involving a racist element in a crossword puzzle in a newspaper had not yet come to trial, while yet another case had ended in acquittal for lack of proof that the defendants had distributed Marxist and racist propaganda, although the court had stated that some of the material came within the scope of section 266 b.

26. Of the remaining 33 cases, some had been closed without prosecution because of uncertainty as to the perpetrator or words or acts used, while others had related to complaints clearly outside the scope of section 266 b and the Convention. In some cases a balance had had to be struck between protecting freedom of expression and protection against racist language. Such conflicts had been the central issue in cases brought before the European Court of Human Rights. Some 10-15 cases recently referred to the Danish Prosecution Service fell into that category. Some concerned general statements and political views about foreigners, while others related to a generally negative attitude to minority groups. One case referred to by Mr. Wolfrum concerning a newspaper article containing jokes about minority groups had not been prosecuted but had given rise to exhaustive consideration by the Prosecution Service in connection with section 266 b. In the light of

a case taken to the European Court of Human Rights, the Director of Public Prosecutions had decided that conviction could not reasonably be expected but he had made it clear that the prosecution of editors or journalists for violations of section 266 b could not be ruled out in the future. It had particularly been emphasized that remarks to a newspaper by a local prosecutor about minority jokes did not express the general view of the prosecution service and had had no influence on the decision not to prosecute.

27. With regard to Radio Oasen and the reading of Mein Kampf, the regional prosecutor had refused to bring charges as the book was not illegal in Denmark, although he had made it clear that the use of the book in other circumstances might be considered to be a violation of section 266 b.

28. A number of Committee members had requested information about cases concerning the Act on Prohibition against Differential Treatment owing to Race and the Act on Differential Treatment on the Labour Market. With regard to the acquittals mentioned in paragraph 80 of the report, referred to by Mrs. Zou Deci, precise information was unavailable. However, acquittals in such cases were normally due to lack of evidence and to the application of the fundamental principle of in dubio pro reo.

29. Neither the Director of Public Prosecutions nor the police had statistics on the two Acts but the former was considering what measures might be taken to ensure that statistics were made available in future. He was also considering instructing the police and the Prosecution Service generally on the implementation of article 80 of the Danish Penal Code in cases involving racially motivated offences. The Copenhagen Police Commissioner had already taken steps in that connection.

30. The Director of Public Prosecutions and the Prosecution Service much appreciated the work of the Committee and the fruitful dialogue maintained with it.

31. Ms. TROLDBORG (Denmark), responding to questions about the recruitment and training of the Danish police, said that the Minister of Justice considered it of utmost importance that the Danish police should represent a broad spectrum of Danish society. To ensure that young people with foreign ethnic backgrounds were encouraged to enter the force, the Minister and the National Police Commissioner were in constant dialogue with the various organizations representing immigrants and ethnic minorities. As stated in paragraph 100 of the report, evening preparatory courses were directed primarily at people with ethnic backgrounds wishing to apply to the Police Academy or to the prison and probation services.

32. Application forms for those services did not cover such details as race, colour of skin or ethnic background, and the National Police Commissioner was consequently reluctant to provide statistics as to the effects of those measures, but he had informed the Minister of Justice that the police force included officers with Hungarian, Yugoslav, Turkish and Pakistan backgrounds. Due to special interest shown recently, the National Police Commissioner had decided exceptionally to register the ethnic backgrounds of candidates admitted to the Police Academy in 1996. As stated in paragraph 102 of the

thirteenth report, 128 candidates had been admitted, of whom 7 had ethnic minority backgrounds, their countries of origin being Pakistan, Italy, Egypt, Czech Republic, Poland, Morocco and Turkey.

33. Particular attention was drawn to the details given on police training in paragraphs 98 and 99 of the report. In addition, as part of the compulsory in-service training, the Police Academy had introduced panel discussions with representatives of the Danish Red Cross, the Danish Centre of Human Rights, an organization representing young immigrants, the Documentation and Advisory Centre on Racial Discrimination, and other NGOs. Those discussions, some 60 of which had already taken place, were considered of great importance in providing police officers with social and cultural knowledge and an understanding of ethnic minorities.

34. In order to ensure good relations between the police and ethnic minorities, the National Police Commissioner, in coordination with the Board for Ethnic Equality, had prepared a booklet on the Danish police, which would shortly be published in Urdu, Serbo-Croat, Turkish and Arabic, aimed in particular at asylum applicants and other persons coming into contact with the Danish Refugee Council, the Danish Immigration Service and similar services. The Ministry of Justice, in cooperation with the Documentation and Advisory Centre on Racial Discrimination, was also preparing a leaflet on the rights and obligations of the police vis-à-vis ethnic minorities, which would shortly be published in Danish, English, Turkish, Serbo-Croat, Arabic, Somali, Farsi and Urdu.

35. In addition, a special strategy had been initiated by the Copenhagen Police Commissioner to strengthen the minorities' confidence in the police as a non-discriminatory, fair and helpful authority, and to improve relations between the police and ethnic minorities by identifying possible conflicts and suggesting possible solutions. The strategy covered the police handling of complaints of racial discrimination and emphasized the importance of a continuing dialogue between the police and the NGOs representing ethnic minorities. Although there was no formalized strategy at the national level, all local police districts with large ethnic populations took various initiatives to establish good relations with the ethnic minorities.

36. With regard to a clash between a small group of second generation immigrants and the police in a central Copenhagen district in July 1997, referred to by Mr. Diaconu, various initiatives had resulted, involving the Copenhagen Police Commissioner, the local city council and the mayor of Copenhagen. Furthermore, the Crime Prevention Council, established in 1971, had decided to launch a special theme on crime prevention aimed at young immigrants and the children of immigrants. The Minister of Justice had personally contributed a sum of 500,000 Danish krona to a crime prevention project involving second generation immigrants living in central Copenhagen who were considered to be at risk of involvement in criminal activities.

37. With regard to the questions on citizenship raised by Mrs. Sadiq Ali, Mr. Shahi and Mr. Sherifis, there were two main principles involved in the matter of citizenship: jus soli and jus sanguinis. Denmark had recognized the latter principle since 1898, which meant that the children of foreign citizens living in Denmark were not automatically granted Danish citizenship

at birth. However, they were automatically granted Danish citizenship if their parents decided to become Danish citizens before the children reached the age of 18. Normally, such children could also obtain Danish citizenship between the ages of 21 and 23 by means of a simple declaration. The normal naturalization procedures applied to any application for citizenship beyond that age.

38. With regard to names, under section 10 of the Act concerning Personal Names, parents were prohibited from giving a child a name which might be considered disadvantageous to the child. Accordingly, a girl could not be given a boy's name and vice versa, although such names could be used as middle names, providing that a child already had a surname. In that connection it was true, as Mr. Wolfrum had suggested, that a Somali girl had not been allowed to have as her first names the names of her father, grandfather and great-grandfather. Boys with connections to Catholic countries could be given the name Maria.

39. Ms. KLINGSEY (Denmark), replying to questions raised by Mr. Wolfrum on the training of refugees and immigrants and the voluntary nature of pilot projects in vocational education, said that from 1 January 1996, vocational schools in Denmark offered flexible and voluntary courses in schools of between 5 and 40 weeks with the aim of improving pupils' qualifications and enabling them to complete their education and training. Certain State subsidies were available to vocational schools offering special introductory courses for refugees and immigrants to introduce them to the entire range of vocational education and training and thus enable them to develop their own skills and gain transfers on merit to similar Danish educational courses.

40. Under a ministerial order dating back to November 1984, the municipalities, which were responsible for basic education in the Danish Folkeskole, were obliged to provide education to bilingual children in their mother tongues, provided that a minimum number of pupils was involved and that teaching materials and qualified teachers were available. If such instruction could not be given locally, it might be available in a neighbouring municipality.

41. Mr. Diaconu had asked about the "reception classes" provided for children with a mother tongue other than Danish. They might take place in a school other than the child's own district school, so that, for instance, a class of children with the same mother tongue might be set up, with a bilingual teacher, or a class of pupils of the same age, in order to make the teaching more effective. The only criteria used for the choice were the educational interests of the child, based on an assessment of his/her knowledge of Danish. All decisions were made by the class teacher and the head teacher of the school.

42. Children usually attended the reception class for one-and-a-half to two years before returning to the ordinary district school. There was, therefore, no question of a child being excluded from the district school for ethnic reasons. The reception class was intended for children with a mother tongue other than Danish who had no contact with Danish at home. The Government considered the system to fall into the category of affirmative "special measures", which were authorized under article 1, paragraph 4 of

the International Convention on the Elimination of All Forms of Racial Discrimination. There were no figures about the number of reception classes in schools other than the district schools, but it was clear that the numbers were increasing and that they were catering particularly for children born in Denmark, but who did not know enough Danish to attend ordinary schools.

43. Mr. TROLDBORG (Denmark), answering further points raised by members of the Committee, said that there were 29 hostels for battered women in Denmark, with 99 paid staff and 1,700 voluntary staff. An earlier quota system which determined which women were allowed to take refuge in such hostels had now been lifted and would not be reintroduced. The Ministry of Social Affairs had met the hostel authorities to discuss the special support required by women of foreign origin. More details would be included in Denmark's next periodic report.

44. Members had referred to the claims for compensation relating to the relocation of a number of families from Thule in Greenland in 1953 (see document CERD/C/319/Add.1, paras. 130-135). Since the submission of Denmark's report, the dialogue between the Danish Government and the Greenland Home Rule Government on ways to improve living conditions for those families had continued. Danish government funding to subsidize air links to the Thule region had been diverted to finance the construction of an airstrip at the main village, Qaanaaq. Negotiations were still under way with the United States Government about the United States air base in the region. It appeared that the Danish and Home Rule Governments had settled the outstanding disputes to their satisfaction.

45. Denmark had recognized the competence of the Committee to receive and consider communications from individuals. The Government sought to publicize the work of the Committee and other human rights bodies as widely as possible, by means of press releases, reports to Parliament and the Internet.

46. His delegation had listened with interest to members' comments on racial segregation, housing quotas and other matters, and would pass them on to the appropriate authorities to help in future planning. He thanked the Committee for the valuable exchange of views which had taken place and promised that members' outstanding queries would be answered in the next periodic report.

47. Mr. YUTZIS thanked the Danish delegation for its replies. He had noted a number of positive elements, including the training available to immigrants and the training of police in human rights issues. However, he had not been reassured by the delegation's explanation of the Government's reaction to the radio station Radio Oasen, which was run by a neo-Nazi association (see document CERD/C/319/Add.1, paras. 36-39), and by the reversal of the local council's decision to withdraw the radio station's broadcasting licence. He wondered how it had been possible to set up such a radio station at all, since its existence seemed a clear contravention of article 4 of the Convention.

48. He had not received a reply to his question about the case described in paragraph 41 of the report. The discriminatory advertisement in question had been withdrawn, but had any action been taken against the publication in which it had appeared?

49. Mr. ABOUL-NASR said that he had been most impressed by the quality of Denmark's report, which showed that the country took its commitments under the Convention seriously.

50. However, he was not satisfied by the Danish representative's explanation of the prohibition of certain children's names on the grounds that they might prove a disadvantage to the child. Many Arabic names, for example, could be given to either boys or girls. Who decided whether a child would be put at a disadvantage by a particular name? He hoped that the next periodic report would give more details, including any relevant legislation and court decisions.

51. Mr. GARVALOV commended the high quality of the report, particularly the material dealing with article 7 of the Convention.

52. He asked for further explanation of Denmark's understanding of the term "national minority". Denmark had acceded to the Framework Convention for the Protection of National Minorities, drawn up by the Council of Europe. However, he was aware that members of the Council of Europe had at least two interpretations of the term "national minority", ranging from an ethnic group originating in a neighbouring nation to an ethnic group which was different from the main group in the population. Under Danish law, there was only one national minority, the German population: did that mean that Denmark favoured the first interpretation? And what was the status of the Somali, Turkish, Yugoslav and other populations?

53. The CHAIRMAN pointed out that the Convention made no mention of "minorities".

54. Mr. van BOVEN asked for clarification on two points. The first concerned the measures to strengthen the enforcement of section 266 b of the Penal Code, dealing with racist propaganda and similar matters. Did the Director of Public Prosecutions have the final say in a decision not to bring charges in such a case, or could that decision be challenged by any individual, group or authority?

55. His second point concerned the Act on Prohibition against Differential Treatment on the Labour Market, which seemed actually to go further than was required. Did it apply to jobs in public service, including the police force, and to jobs in immigrant organizations such as the Danish Refugee Council and the Immigrants' Confederation?

56. Mr. AHMADU acknowledged that there were not many racist attacks against foreigners in Denmark, but wondered whether the "minorities within minorities" or "immigrants within immigrants" - such as Africans and Asians - suffered the most. What measures were taken to protect them in particular? He was concerned about them because the emphasis in the report had been on European immigrants, such as Turks, Bosnians and Germans. Were the young immigrants who had been refused access to discotheques and the like, referred to in paragraph 81 of the report, hooligans, or not well-dressed? Such incidents were very prevalent in certain parts of the United States of America and South Africa.

57. While it was generally easier than before to gain entry to Danish universities, African immigrants found it more difficult. Was that because Denmark was now in the European Union, or because its educational standards had risen? The naming system should be carefully reviewed. In Nigeria, for instance, it was often difficult to distinguish male and female names; the Danish practice clearly encroached on the cultural rights of the country's minorities. He would also have expected a highly developed country like Denmark to have provided more statistics on immigrants, particularly from Africa and Asia.

58. Mr. De GOUTTES asked whether the extremist group, the "green-jackets", had reappeared, and if so whether any legal action or other measures had been taken against them.

59. Mr. SHERIFIS asked which of the two Conventions - the Convention on the Elimination of All Forms of Racial Discrimination, or the European Convention of Human Rights - prevailed, and how they stood vis-à-vis internal Danish legislation. According to paragraphs 3, 13 and 17 of the previous report (CERD/C/280/Add.1), immigrants who had been resident in Denmark for a three-year period immediately preceding local elections had been granted the right to vote in such elections, and many of them had become citizens. Had any of those new citizens risen to high political positions in Parliament or the Executive?

60. Mr. VALENCIA RODRIGUEZ said his country, Ecuador, had a long tradition by which male children were given both "male" and "female" names. Under the civil register law, parents were free to choose their children's names, as long as they were not "extravagant". Recent case law had classified such names as "Sputnik" and "AIDS" as extravagant.

61. Mr. RECHETOV said Denmark had done a great deal to ensure respect for its minorities and provide suitable status for the Faroe Islanders and Greenlanders; his country, the Russian Federation, should take it as a model in its own relations with such turbulent provinces as Chechnya. In addition, Denmark had always helped the Faroe Islands with any financial problems. However, he did not understand why the delegation insisted there was just one minority in the country, the Germans, as though Greenlanders and Faroe Islanders did not constitute minorities. Why the different treatment between European and non-European ...inorities?

62. There should not be too many restrictions on parents' rights to name their children. Naming was indeed of concern to bureaucracy, but a name was very much a part of a person's identity, dignity and self-respect. In Iceland, for example, a Latin American family had been prevented by regulations from calling their child "Aristotle", whereas an Icelandic name meaning "ugly day" was acceptable.

63. Mr. KLINGENBERG (Denmark) said the next report of Denmark would look seriously at a number of issues raised by the Committee. One was the naming policy, and another was how to balance freedom of opinion with the ability to take legal action against groups disseminating racist propaganda. It was an extremely difficult balance to strike, and the Government had not perhaps yet found the right one. Regarding the relationship between the United Nations

Convention and the European Convention of Human Rights, both had been ratified and were applied in Danish administrative practice; the only difference was that one of them was firmly incorporated into Danish legislation, but that did not change their status as binding international conventions. In ratifying the European Framework Convention for the Protection of National Minorities, which was a very specialized text, both the Government and Parliament had decided after careful consideration that it applied only to the German minority.

64. Mr. HJORTENBERG (Denmark), replying to other questions, said that in principle, a decision not to prosecute under article 266 b of the Penal Code could be appealed to a higher level of the prosecution service, but people wanting to challenge had to be a party to the case. He had no information on which groups of foreigners suffered the most from racist attacks, nor had he heard anything recently about the "green-jackets". Some years ago, they had been a small gang of youths with no political aspirations at all.

65. Mr. WOLFRUM (Country Rapporteur) said that among the wealth of information received from the delegation, he particularly welcomed the detailed and sometimes very technical information on many complicated aspects of the country's implementation of the Convention, much of which went far beyond what the Committee normally heard. The many positive aspects - including the labour laws, the Act on Prohibition against Differential Treatment owing to Race, and the "icebreaker arrangement" - were highly laudable. However, he shared Mr. van Boven's view that the Act was perhaps somewhat narrow vis-à-vis the possibilities of affirmative action and inadequately reflected article 2, paragraph 2, of the Convention. He would like more information and figures on the training and composition of the police, vocational training and the participation of foreigners in local elections, all of which were positive aspects, as were the changes in criminal law contained in the amendment to article 266 b of the Penal Code, although they did not yet comply with article 4 of the Convention. Another positive aspect was acceptance of the individual complaints procedure.

66. Among his concerns was the prosecution system in cases of racial discrimination. The provision in force pertained primarily to propaganda, which was in keeping with article 4, but the restriction to propaganda was too limited. Mein Kampf was sold openly in Denmark, and yet it certainly constituted propaganda. The matter should be reconsidered. As to the balance between the prohibition of racial discrimination and freedom of expression, even "hate speech" was protected under the Constitution, but under the Convention the State party was also obliged to restrict certain forms of expression. He was not satisfied, either, with the limitation on who could challenge a decision by the prosecution. The fact that there was no enforcement system was a flaw; he would like more information on procedural and substantive ways to deal with the problem.

67. Regarding the use of citizenship and interpretation of article 1, paragraph 2, of the Convention, it was acceptable not to give a work permit to foreigners; however, if foreigners had such a permit and were discriminated against by the private sector, that situation was not covered. Under article 5, States parties were obliged to see that foreigners with work permits had employment; the decision lay with the State party, not with

private enterprise. The same applied to the right to housing: if there were no government decision on the purchase of homes, any form of discrimination on the real estate market, such as failure to grant loans, was inconsistent with article 5.

68. Personal names were a part of one's identity. If persons affiliated to Catholicism could choose the name "Maria", why did the naming systems of other religions not have equal status? All names were now permitted in Germany, although perhaps not "Sputnik" or "AIDS"; "Fatima" had become very common, and not just among Arabs. Iceland had recently changed its naming system, upon the Committee's initiative.

69. He was concerned by the statement that certain laws did not apply to Greenland or the Faroe Islands; the next report should explain to what extent the Convention was applicable to them and through what means. He disagreed with the Chairman about the Inuit population in Thule: the issue was whether the people involved had received the proper compensation. Those people - a significant part of the population in that area - were individuals, families and a group; indigenous populations placed a certain emphasis on not being looked upon only as individuals, but also as families and groups. The Home Rule arrangement did not cover all the issues. The persons involved must have the possibility either to use the areas as they had before, or to receive compensation. The issue did not concern only Greenland and Copenhagen but also the authorities that had undertaken the "expropriation", and the communities; the Government did not seem to have understood the underlying issue in the case. That being said, he commended the Danish Government's overall record in implementing the Convention.

70. The CHAIRMAN associated himself with that final comment. The Danish delegation was to be commended for its informative replies to the Committee's questions. The Committee had thus concluded its consideration of the report of Denmark and looked forward to continuing its dialogue with the State party.

The meeting rose at 1.05 p.m.

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the Elimination
of all Forms of
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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-first session

SUMMARY RECORD OF THE 1222nd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 7 August 1997, at 3 p.m.

Chairman: Mr. BANTON

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Thirteenth and fourteenth periodic reports of Poland

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GE.97-17721 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Thirteenth and fourteenth periodic reports of Poland (CERD/C/299/Add.10)

1. At the invitation of the Chairman, Mr. Ciecierski, Mr. Kuzmah, Mrs. Dabrowiecka, Mrs. Barańska and Mrs. Chrusciel (Poland) took places at the Committee table.

2. Mr. CIECIERSKI (Poland) said that on 2 April 1997 the Polish National Assembly had adopted the new Polish Constitution, which would enter into force on 17 October 1997. The Constitution guaranteed all citizens equal rights and prohibited discrimination in the political, social and economic spheres. For the first time in Poland, the Constitution guaranteed the rights of national minorities. In article 35, it established the right of citizens belonging to ethnic and national minorities to use their own language, preserve their customs, establish their own educational, cultural and religious institutions and participate in decisions on matters concerning their cultural identity.

3. Article 9 stipulated that the Republic of Poland was bound by the international instruments it had ratified, which according to article 87 were sources of law and according to article 91 were part of the national legal system and self-executing unless the enactment of a law was required for their implementation. Article 8, paragraph 2, stipulated that the provisions of the Constitution on the protection of minority rights were self-executing. Any individual could apply to the Constitutional Court to have a law declared unconstitutional. The new Penal Code, Code of Criminal Procedure and Code of Execution of Penalties would enter into force on 1 January 1998. The provisions in the old Penal Code prohibiting racial discrimination had been maintained in the new Code.

4. On 30 April 1997, the President of the Republic had issued a decree withdrawing Poland's reservation to article 22 of the Convention. The decree would probably enter into force in September 1997. Steps had also been taken to recognize the competence of the Committee to receive and consider communications from individuals or groups of individuals in accordance with article 14 of the Convention.

5. The bilateral treaties which Poland had concluded with Lithuania, Belarus, Ukraine, Germany, the Czech Republic and Slovakia safeguarded the rights of those countries' nationals in Poland as well as the rights of Polish nationals living in those countries. The rights of the national minorities concerned had in fact been respected earlier even though they had not been enshrined in the old Constitution. On 20 June 1997, the Prime Minister had established an inter-ministerial group of experts on questions relating to national minorities, whose tasks included making proposals for implementing minority rights, determining the needs of minorities and improving the coordination of public initiatives on behalf of minorities.

6. On 20 February 1997 the acts governing relations between the State and three churches (Catholics of the so-called Mariawit sect, Old Catholic Mariawit and Pentecostal) had been adopted. That raised the number of churches whose legal status was governed by special laws to 16, with the others operating on the basis of their inclusion in the register. The act governing relations between the State and the Jewish communities of Poland had also been adopted on that date. It specified the legal and financial status of the Jewish communities and the conditions for restoration of assets which had belonged to those communities on 1 September 1939 and had been taken over by the State after the Second World War. The progress made with the programme for the former Auschwitz concentration camp also showed how far relations between Poland and the Jewish communities had improved. The Government was cooperating with the Holocaust Museum of New York and the Memorial Institute in Jerusalem in order to provide better protection for the camp.

7. The Special Rapporteur of the Commission on Human Rights had referred in his latest report to the criminal proceedings instituted against a priest, Henryk Jankowski, for anti-Semitic remarks made during a sermon. The court had found Rev. Jankowski guilty of insulting a national group on account of its religion (Penal Code, arts. 274 (1) and 193 (1)) and had handed down a two-year suspended sentence with probation, together with a fine of 1,000 zlotys to be used in the public interest. He pointed out that the sermon had been criticized by the Government earlier. There were currently 13 cases relating to racial discrimination in progress, at the stage of either preparatory or court proceedings. They concerned the dissemination of anti-Semitic leaflets, posters and publications defamation of persons on account of their nationality, profanation of graves and arson. Set against the crime rate for the entire country, however, such cases were of minor significance and were always strongly condemned by both society and the political authorities.

8. Mr. SHAHI (Country Rapporteur) noted with satisfaction that the Polish Government had prepared the document containing the thirteenth and fourteenth periodic reports (CERD/C/299/Add.10) on the basis of the revised guidelines regarding the form and content of reports, in accordance with the Committee's recommendation following its consideration of the tenth, eleventh and twelfth periodic reports in March 1993 (A/48/18, para. 187). The core document had not yet been produced, however.

9. The adoption and entry into force of the new amended Constitution would certainly have a strong impact on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination in Poland. The situation when previous reports had been considered had been ambiguous, for it appeared that only treaties ratified after the adoption of the 1989 Constitution could be considered as automatically becoming part of Polish law or directly applicable at the domestic level, which had not been the case for the Convention, as it had been ratified before 1989. Poland's latest report mentioned certain judicial decisions taken without reference to related constitutional norms, which indicated that many of the Convention's provisions should be considered as part of domestic law, but the situation remained unclear. The report also referred to norms of self-executing character appearing in the Convention, which, as such, could and should be applied

directly in Poland (paragraph 5), although that did not give the Convention the same status in domestic law as that enjoyed by other international human rights instruments, such as the European Convention. It was not certain whether the new Constitution made the Convention directly applicable under domestic law, given that many of its provisions were themselves not of a self-executing character.

10. With regard to the more detailed demographic data which the Committee had asked Poland to provide after it had considered the previous reports, the fourteenth report indicated that the collection of information on race was prohibited in Poland (paragraph 10). After the Second World War, Poland had ceased to be a multinational country, 98 per cent of its inhabitants being Polish. The census to be conducted in the year 2000 would not collect personal data on race and nationality "in the meaning of ethnic origin". Nevertheless, the fourteenth periodic report contained approximate data collected by the Parliamentary Commission on National and Ethnic Minorities and also by various minority associations. He added that the Jews, who had numbered 3 million before the war and 200,000 after the war, had numbered less than 10,000 in 1996.

11. During the consideration of Poland's twelfth periodic report, some Committee members had doubted how, in the absence of a definition of racial discrimination in Poland's legal system, articles 67 and 81 of the 1952 Constitution could be implemented. Those provisions made no reference to discrimination on grounds of colour, descent or ethnic origin, which were included in the definition of racial discrimination contained in article 1 of the Convention. The Government of Poland might wish to consider widening the scope of articles 67 and 81 so as to make them conform more fully to article 1 of the Convention.

12. According to an earlier statement by the Polish delegation (CERD/C/SR.982, para. 11), a department of the Ministry of Culture was in charge of coordinating activities relating to national minorities, which were based on the principles of protection of minorities, affirmative action and the autonomy of minority organizations, movements and associations. While that initiative was commendable in itself, it would be interesting to know what had actually been done in the framework of that policy.

13. In order to safeguard the political rights of national minorities, in 1993 a provision had been added to the Act on Elections to the Sejm, by virtue of which the requirement of the percentage threshold (5 per cent) of votes cast in the whole country did not apply to the electoral committees of registered organizations of national minorities. The Committee would appreciate being informed of other specific steps taken by the Government of Poland to implement article 2 (1) (d) of the Convention.

14. Despite the positive measures taken by the Polish Government, racial discrimination and intolerance had not been entirely eliminated in Poland, since in 1995 the Ombudsman had pointed to increasing racial and religious hatred in some communities and had criticized the behaviour of a priest in Gdansk (paragraph 15). During the consideration of the twelfth report, Mr. Banton had referred to expressions of anti-Semitism cited in a 1992

publication (Anti-Semitism: World Report 1992). Similar acts were cited in the 1996 edition of the report. In another 1996 report, the United States Department of State had described a police raid on a Romany camp which had allegedly resulted in over 200 arrests and 115 expulsions to Ukraine and Romania. According to the same report, 25 per cent of visitors to Poland of African, Asian and Arab descent experienced some type of aggression during their stay and 60 per cent experienced verbal abuse based on their skin colour.

15. According to the information in Poland's fourteenth periodic report on the implementation of article 4, any act of racial discrimination or incitement to racial discrimination, in any form whatsoever, was a criminal offence and the financing, aiding or abetting of such acts was also prohibited. The draft new Penal Code would retain all the existing regulations concerning racial discrimination and introduce new articles in the part entitled "Offences against peace, mankind and war crimes" (paragraph 18). Although such offences were more related to the Convention on the Prevention and Punishment of the Crime of Genocide, their inclusion in the Code was certainly commendable. During the consideration of the previous report, several members of the Committee had remarked on the low number of convictions in cases involving racial discrimination: a mere eight during the period 1986-1990. The fourteenth report stated that there had been only three indictments during the period 1992-1994, and no convictions. During the consideration of the twelfth report, several members of the Committee had asked for more information about the Polish National Party, which claimed a membership of 20,000 and whose Chairman, Mr. Tejkowski, was under criminal prosecution for his statements and activities. The Committee would be interested in knowing the court's verdict, which was not mentioned in the fourteenth report, as well as the outcome of the case involving the priest in Gdansk.

16. Certain articles of the 1952 Constitution which were still in force guaranteed the equal rights provided for in article 5 (c) of the Convention, notably with regard to elections. However, the German minority was represented in the Sejm by 4 deputies out of a total membership of 460, and the Ukrainian minority by 1 deputy. Representatives of the Belarusian, Lithuanian and Gypsy minorities had also run for the Sejm but had not been elected. The various minorities were represented in the local councils, with the exception of the Gypsy community, which was nowhere in the picture. Neither the fourteenth nor the twelfth periodic report provided any information on the representation of national or ethnic minorities in the country's public service, and the Committee would appreciate details from the delegation.

17. Concerning the civil rights listed in article 5 (c) of the Convention, Polish law imposed some limitations or restrictions on freedom of movement and the right to choose one's place of residence (paragraph 43); the right to own property (paragraph 48); the right to inherit, as applied to farms (paragraph 49); freedom of assembly and association during a state of emergency (paragraph 50) and freedom of thought and freedom of speech in practice. On the last point, he would like to know what verdict had been handed down in the Leszbek Bubel case.

18. A 1996 report by the United States Department of State had spoken of limitations on freedom of speech and freedom of the press and incidents of intolerance towards minorities, but fewer than in 1995. There was no legislation guaranteeing the right to privacy. The print media were uncensored and independent although they could be subject to prosecution as in the Siwicki case. Women were under-represented in the Government, the Parliament and political party leadership. Violence against women continued to be a problem and the traffic in women was increasing.

19. Concerning economic, social and cultural rights, Polish legislation did not differentiate in any way on the basis of race, nationality or religion (paragraph 67). The right to work was guaranteed under the 1989 Employment Act, which reflected the provisions of ILO Convention No. 111 on Discrimination in Employment and Occupation. Information would be welcome on the implementation of the Act.

20. The report provided no concrete details on the implementation of the provisions of the Convention regarding the right to form trade unions and the right to medical care, social security and social services. The Committee would appreciate information on the enjoyment of those rights, in particular by the Gypsies and Polish Tartars. Also according to the 1996 report of the United States Department of State, there was disproportionately high unemployment among the Romany community and discrimination against them by local officials in the provision of social services.

21. Concerning the right to education and training, after considering the previous periodic report the Committee had asked the Polish Government to provide more detailed information on the teaching of languages spoken by the different ethnic groups in its next report. The fourteenth report described the structure of the national education system, which was a three-level system: primary (obligatory): secondary (vocational or general) and higher education free of charge in State schools. The 1991 Act governing the educational system also provided for teaching in the mother tongue for children of non-Polish nationality in order to maintain their sense of national, ethnic, linguistic and religious identity and in particular to learn their native language as well as their history and culture (paragraph 72). In that context, the committee would like to know about the provisions of the bilateral treaties with Germany and Belarus relating to the rights of national minorities. The report contained figures on the number of institutions, pupils and teachers for five minority languages (paragraph 74), but there was no mention of the Romany language. Further information was also needed on that point.

22. The fourteenth periodic report should have provided further information on the restructuring of the administration of justice, which had been briefly dealt with during the consideration of the twelfth report. On that occasion several Committee members had asked for additional information about the functions of the Ombudsman. The fourteenth report stated that, if an act or omission of the organs, organizations and institutions which were obliged to comply with and exercise civil rights and freedoms resulted in any infringement of the rights and freedoms specified in the Constitution or in other provisions of the law, the person whose rights had been violated was

entitled to file a complaint to the Ombudsman, who was also competent to examine issues related to the protection of civil rights and freedoms in respect of foreigners. In the period covered in the report, in none of the cases examined had the Ombudsman ascertained discrimination for racial reasons, and the few cases involving alleged discrimination on grounds of nationality had not been confirmed (paragraph 15).

23. Considering the efforts made to promote human rights teaching in Poland and to disseminate the objectives of the Charter of the United Nations and the Universal Declaration of Human Rights, and considering the fact that Poland was a party to the International Covenant on Civil and Political Rights and the European Convention on Human Rights, could Poland not recognize the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations, especially as the Polish representative had stated, during consideration of the previous periodic report, that Poland had not yet made the declaration under article 14 of the Convention (A/48/18, para. 194) only for technical reasons?

24. Mr. VALENCIA RODRIGUEZ said that he was pleased to note articles 67 (paragraph 2), 81 and 82 (paragraph 1) of the "Little Constitution", by which Poland had provided itself with the necessary legal basis for implementing the Convention. As things stood, however, the only authoritative texts were decisions by the Supreme Court and the Constitutional Court; he asked whether there had been cases where the judicial authorities had had to refer to those decisions in arguing that international instruments took precedence over internal law. Noting that the draft new Penal Code mentioned in paragraph 18 of the report had been adopted and that it contained provisions enabling Poland to implement the Convention, he expressed the hope that the Government would in due course provide all relevant information on the implementation of those provisions. In connection with the information contained in paragraph 5, he asked whether the Polish delegation could provide specific examples of the direct application in Poland of some of the principles laid down in the Convention.

25. He drew attention to the demographic statistics in paragraphs 10 to 12 of the report, which showed that, although Poland was not a multiracial country, it recognized - commendably - that there were numerous national minorities of substantial size in the country.

26. Paragraphs 15 et seq. had also drawn his attention, in particular because they referred to the functions of the Ombudsman, who was empowered to examine complaints of violations of civil rights and fundamental freedoms, and could even ensure that criminal prosecution was instituted, as in the Jankowski case in Gdansk. The verdict in the case showed that racist propaganda was indeed covered by the law. He would be interested in receiving information on the 13 cases of racial discrimination referred to by the Polish delegation, as they related to the implementation of article 4. In his view the Penal Code met the requirements of article 4 (a) but did not reflect the provisions of article 4 (b) satisfactorily at the national level, for it did not explicitly prohibit racist organizations. If the delegation could provide details on the cases mentioned in paragraph 28 of the report, the Committee would have a better idea of the scope of articles 272 and 274 and of how they were applied.

27. The information given in paragraphs 20 et seq. of the report on guaranteeing equal rights to minorities was very interesting, and the steps taken to ensure representation of minorities in the Sejm and other governmental bodies were commendable. He noted, however, that only the German, Ukrainian, Belarusian, Lithuanian and Gypsy minorities had presented candidates for the Sejm, Senate or town and commune councils; he would like to know whether steps were being taken to enable the other minorities to be represented.

28. Paragraphs 29 to 31, which described the Acts of 1989 and 1990 concerning control of associations and assemblies with a view to counteracting discrimination, unfortunately gave no information on the actual implementation of the acts. He was not clear what was meant by an "ordinary association" and how it was possible in practice to monitor such associations inasmuch as they did not have legal personality.

29. Turning to paragraphs 68 to 70 concerning the implementation of article 6 and reverting to the functions of the Ombudsman, he asked whether the latter could unilaterally impose penalties or decide how much compensation should be paid to a victim of discrimination.

30. Mr. de GOUTTES said that the report contained much useful information, especially in paragraphs 2 and 24 on legislative texts and paragraph 28 giving figures. The report did, however, have two shortcomings: the demographic data provided in paragraphs 10 to 12 was not satisfactory, since it was not official, and the information provided in paragraphs 36 to 67 was more relevant to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

31. He welcomed the fact that the new Constitution and new Penal Code had been adopted, but he had the impression that the new Penal Code had unfortunately not introduced the changes mentioned in paragraph 18 of the report concerning crimes against humanity, and he wished to know how things stood in that respect. He was confused by the statement in paragraph 5 of the report to the effect that the Convention contained certain principles that could and should be applied in a direct way, for he was not certain that the Convention could be compared to an international agreement or that it had priority over domestic law, as stated in paragraph 3. The Convention laid down obligations for States only and could not be directly invoked in court by individuals.

32. He did not see what prevented Poland from making the declaration under article 14 of the Convention. It had accepted the possibility of individuals applying to the European Commission on Human Rights in the framework of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which applied only to civil and political rights. Furthermore, the Committee, unlike the European body, was not a jurisdictional mechanism; it only made recommendations. The International Convention on the Elimination of All Forms of Racial Discrimination had a wider scope than the European Convention, since it applied to all rights, whether civil and political or economic, social and cultural. The mechanisms of the two conventions should therefore be seen as complementary.

33. Mr. GARVALOV said that neither the report nor the additional information provided at the current session led to the conclusion that the Constitution explicitly prohibited discrimination based on colour, descent or national or ethnic origin. Article 13 of the Constitution did forbid the existence of political parties and other organizations advocating racial or national hatred, but that provision related more to article 4 than article 1, paragraph 1.

34. As Mr. Shahi had pointed out, the demographic data contained in paragraphs 10 to 12 were insufficient. In view of its history, it was understandable for Poland not to establish official statistics on the size of national or ethnic minorities. Considering the information provided in paragraph 21, however, it might be wondered on the basis of what criteria the representatives of national or ethnic minorities were elected, if the size of the communities they represented was not known. In paragraph 10 of the report, the Government of Poland stated that the international organizations did not recommend the collection of data on race and nationality in conducting censuses; in fact, a method established by the United Nations did exist, which proposed a classification based on 26 obligatory criteria and three optional criteria, namely mother tongue, ethnic origin and religion.

35. He had studied the table on page 6 of the report closely. Concerning the number of Gypsies, he asked whether the gap between the figure established by the Parliamentary Commission and that given by the national associations - 25,000 and 3,000 respectively - was due simply a typographical error. According to the table, the Ukrainian and German minorities were approximately the same size; he asked why there was only one deputy for the Ukrainian minority in the Sejm while there were four deputies for the German minority. Noting that paragraph 12 mentioned "minorities of an emigration nature", he drew attention to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

36. Referring to the Jankowski case, which had led to criminal proceedings and a conviction - and properly so - he expressed concern at information to the effect that the authorities in Cracow had allegedly refused to authorize the establishment of a park in memory of Jews who had died during the Second World War, and at the obviously racist nature of the programmes promoted by some of the candidates in the presidential campaign.

37. He was surprised to read in paragraph 19 that there were 120 associations of minorities and in paragraph 20 that the Government cooperated with only 11 of them. What was the reason for that? In speaking of national minorities, the Polish delegation had referred to treaties of friendship and good neighbourliness between Poland and neighbouring countries: in the light of the information provided in paragraphs 11, 19 and 20 of the report, that appeared to indicate that Poland interpreted "national minority" as meaning a minority that had come from a neighbouring country. If so, did bilateral treaties contain a guarantee against secessionist claims?

38. In his opinion, the fact that some of Poland's basic legislation did not provide for differences of treatment between citizens on grounds of race, colour, birth or national or ethnic origin was not sufficient to meet the specific guarantee set forth in the Convention.

39. Mr. DIACONU said that Poland's efforts steadily to improve respect for human rights and minority rights were commendable. He noted that Poland had signed bilateral treaties with its neighbours, including Germany, requiring Poland to observe OSCE principles, which had the force of law, and to protect minorities and minority languages, cultures and religions, and also requiring all members of minority groups to show loyalty to the country hosting them. That type of treaty, whose purpose was to protect minorities, protect borders and prevent any territorial claims, was appropriate for limiting causes of conflict.

40. As for opportunities for children of minority groups to learn their mother tongue, if the size of such groups as given in paragraph 11 was compared with the number of children learning their mother tongue according to paragraph 74, it appeared that the latter represented a proportion of the population group in question that was much smaller than the average proportion of children enrolled in school among a majority population. He would like to know whether a demand existed on the part of the minorities, whether there were private schools providing teaching in minority languages and whether the Government of Poland was planning any steps to expand that type of teaching.

41. He noted that in many European countries, the questions asked in population censuses did include ethnic or national origin. Often the minorities themselves wished to know those figures and to have them published, in order to achieve recognition. He wondered how it was possible to take steps in favour of a minority without knowing its size and suggested that the Government of Poland might alter the rules governing practice in that area.

42. Mr. CHIGOVERA said that he wished to revert to the provisions of articles 67 and 81 of the 1952 Constitution, mentioned in paragraph 2 of the report. Given that a new Constitution had been adopted, were those provisions still in force? Those articles made no mention of distinctions based on colour and ethnic or national origin. Even article 32 of the new Constitution, which covered discrimination, was too general, since it said nothing of the specific areas set forth in the Convention. In fact, the new Constitution defined the churches' status more clearly than that of ethnic groups.

43. Concerning the statement in paragraph 10 that Poland had ceased to be a multinational country, which had been made well before Poland's ratification of the Convention, he asked whether that statement still provided the basis for the country's policy regarding demographic data on ethnic groups. Article 8 of the Act on Public Statistics prohibited the collection of information on race. What was the status of that article in the light of article 35, paragraph 2 of the new Constitution, which recognized the right of ethnic minorities to preserve their own culture and to establish their own educational institutions? The prohibition against collection of information on race did not seem to comply with the obligations of States parties. For example, how could article 4 be implemented if such information was not available? Even if some very useful provisions did exist for implementing article 4 of the Convention (paragraphs 24 to 28), it was not very clear for whom they were intended, in the absence of precise data concerning ethnic minorities.

44. Mr. SHERIFIS thanked Poland for having given effect to the Committee's conclusions by submitting a report that met the Committee's guidelines and contained demographic data. That having been said, the report indicated that Poland had no official statistics on the number of national and ethnic minorities in its territory, but that the persons who would be taking part in a national census planned for the year 2000 would be replying to a question on their citizenship. How was citizenship interpreted, and what question would they be asked? What were the principles mentioned in paragraph 10 which did not allow for the collection of data on race and nationality, and which international organizations had adopted them?

45. During the period under review, Poland had been very active in the protection of human rights, judging from the number of legislative texts ratified and the information given in paragraphs 6 to 9 of the report. It was also interesting to note that the objectives of several United Nations instruments, including the Convention, had been taken into account in laying the foundations of general education in Poland. In that connection, he would like further clarification regarding paragraph 19, which stated that Poland was not a multiracial State, although it did have approximately 120 associations of national or ethnic minorities. With regard to information, there were an impressive number of journals and newspapers for national minorities. Were Poland's reports published in all the media? What procedure was followed in preparing them? Was there a drafting committee, and if so, who chaired it? Had Poland begun the procedure for ratifying the amendment to article 8, paragraph 6 of the Convention, as adopted by the contracting parties and ratified by the General Assembly?

46. The Polish delegation had stated that Poland would withdraw its reservations to article 17, paragraph 1 and article 18, paragraph 1 and that it was planning to make the declaration under article 14. The Committee would have preferred to be told that the declaration had already been made, but that was a start, especially as only 24 countries had taken the step so far.

47. Mr. van BOVEN noted that Poland had been among the first countries to ratify the Convention, but had also made several reservations. Contrary to what Mr. Sherifis appeared to believe, according to the Polish delegation not all of those reservations had been lifted. Reverting to paragraph 7 of the report, he noted that in 1993 the representative of Poland had said that Poland's failure to make the declaration under article 14 of the Convention had been due solely to technical reasons. Four years later, the Committee was being told that inter-ministerial procedures were under way in preparation for the declaration. What exactly was the situation? He hoped that that did not mean that the declaration would be postponed indefinitely.

48. Referring to paragraph 15 on the role of the Ombudsman, he welcomed the fact that the report mentioned the Jankowski case. That case represented a particularly distressing anti-Semitic incident, given Poland's history and the fact that the three or four million Jews living in Poland before the war had been reduced to only a few thousand. He urged the authorities to take a clearer stand on the case. In a similar vein, he referred to the incident which had occurred on 19 June 1996 at Warsaw, when the police had raided a Romany camp and made arrests, mainly of women and children. The police had used dogs on that occasion to search the camp, claiming that the community had

buried its dead there. Not finding anything, they had razed the camp with bulldozers and disinfected the premises, on the grounds, as stated by the spokesman for the Governor of Warsaw, that the camp was in complete violation of health regulations. One hundred and thirteen members of the Romany community had then been expelled. That incident raised serious doubts with respect to the implementation of articles 2 and 5 of the Convention.

49. With regard to article 4, the information provided in paragraph 28 on indictments and convictions for offences relating to discrimination were certainly useful, but the Government should indicate in its next report the exact nature of the offences in question. Concerning article 5, the report contained eight pages on civil and political rights and less than half a page on economic, social and cultural rights. With Poland undergoing a transition towards a market economy, the protection of economic, social and cultural rights was more important than ever, especially as the victims of racial discrimination often belonged to the most vulnerable groups of society. It was disappointing to note that the report placed little emphasis on such rights, covered by article 5 of the Convention.

50. The report provided some information on article 6 but said nothing about how its provisions were actually implemented. Were victims of racial discrimination entitled to compensation for both moral and material damage? He would also like to know whether the report and the Committee's conclusions would be disseminated in Poland.

51. Mr. WOLFRUM drew the Committee's attention to paragraph 2 of the report, in particular articles 67 and 81 of the Constitution. He asked why only citizens had equal rights. What was the difference between nationality and citizenship according to the Polish Constitution? The wording of article 81, paragraph 2, was noteworthy, as it was rare for such a provision to be included in a constitution. That was a positive measure and should be commended.

52. In his view the demographic data on page 6 of the report did reflect the situation in Poland, and a country could not be forced to provide demographic data if no census was available. That having been said, he would like to know what was meant by the expression "minorities of an emigration nature" in paragraph 12. Were they new immigrants or minorities who had immigrated?

53. Referring to the electoral system, which was described in detail in paragraph 21, he expressed appreciation for the possibilities it offered minorities and said that the solution adopted was so interesting, complex and favourable towards minorities that the report should have dwelt on it further. The same was true of the agreements concluded by Poland with other States, the most important of which, namely the 1991 agreement with the Federal Republic of Germany, had been mentioned by Mr. Diaconu. Those were unprecedented historical treaties which deserved more detailed treatment in the next report. What was the status of those agreements under Polish domestic law? The next report should indicate the possibilities given the courts, especially the Constitutional Court, to hand down decisions on commitments assumed by Poland in the international sphere.

The meeting rose at 5.55 p.m.

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Fifty-first session

SUMMARY RECORD OF THE 1223rd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 8 August 1997, at 10 a.m.

Chairman: Mr. BANTON

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Thirteenth and fourteenth periodic reports of Poland (continued)

Review of the implementation of the Convention in States parties whose reports are excessively overdue (continued)

Niger

Haiti

ORGANIZATIONAL AND OTHER MATTERS (continued)

Israel

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GE.97-17730 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Thirteen and fourteenth periodic reports of Poland (continued) (CERD/C/299/Add.10; HRI/CORE/1/Add.25)

1. At the invitation of the Chairman, the Polish delegation resumed its place at the Committee table.

2. Mr. ABOUL-NASR said that while he was aware of the sensitivities in European countries in particular about the events which had taken place in Auschwitz during the Second World War, and that laws had even been passed in some countries to punish those who cast doubt on what had happened to the Jews, such measures were exaggerated and failed to take account of the many other nationalities and groups such as Gypsies and Slavs who had also died there. He therefore wished to know how many people had been detained and killed at Auschwitz and what proportion had been Jews. Any memorial to the dead should be dedicated equally to all the victims of Auschwitz.

3. The statement attributed to a presidential candidate at the last elections in Poland, to the effect that Poland was for the Poles, was not in breach of the Convention unless it had been made specifically for racist reasons.

4. Mr. CIECIERSKI (Poland) said that the Committee's valuable comments and questions would help in compiling reports in the future.

5. The question of anti-Semitism, referred to in particular by Mr. van Boven, was a painful one in Poland as elsewhere, but it was important to be aware of the real scale of the problem. The Polish authorities and the church had always taken a firm attitude against anti-Semitism and had condemned it on many occasions. Blatant anti-Semitism was only a marginal phenomenon in Polish society and there was no significant nationalist party in Poland. Candidates and parties with nationalistic or anti-Semitic policies standing for presidential or parliamentary elections never won more than one per cent of the vote. The Polish authorities had an active policy of cultural support for festivals of Jewish culture and their relations with the Institute for Jewish History and other Jewish organizations were intended to promote dialogue and to accentuate the positive aspects of such cooperation and the Polish people's common history since the arrival of the Jews in the fourteenth century.

6. Auschwitz had been a multicultural camp, a place of detention and extermination of people from most of the European nations. The latest research showed that over one and a half million people had died there, 80 per cent of them Jews. Memorials had been placed on the site paying tribute to the dead of all nations. The Polish Government had, moreover, passed a rule to ensure equality of treatment for all the nationalities that had died at Auschwitz.

7. With regard to criminal proceedings, in January 1997 the Regional Prosecutor in Gdańsk had filed a complaint against Father Jankowski for publicly defaming the Jewish minority and comparing the Star of David to the swastika and the hammer and sickle during a sermon. The case had initially been dismissed for lack of evidence, but following an appeal by the prosecutor's office, further proceedings had been instituted as a result of which, in March 1997, Jankowski had been given two years' probation, community service in a primary school and a fine of 1,000 zlotys. If while he was on probation Jankowski evaded his sentence or again breached public order, especially by committing the same offence, charges would be brought before a court. The sermon in question had been formally condemned by the President of the Republic and the human rights Ombudsman, which demonstrated the resolute attitude of the Polish Government.

8. In another case mentioned the previous day, a man had been charged by the Prosecutor General in Warsaw of publishing a paper publicly inciting national discord on the basis of a national difference. The Warsaw District Court had dismissed the case in the light of the provisions of the Criminal Code following an appeal by the defence counsel. However, the decision had been subsequently overturned and the case transferred to a regional court where it was still awaiting consideration.

9. Criminal charges had been brought in two other cases. In September 1995, a regional court had found a man guilty of offences under the Criminal Code for having publicly slandered another man in respect of his racial origins, attacking him with tear-gas and threatening him with a knife, in January 1995, together with two other men. One of the assailants had received a nine-year sentence and his co-accused had been given six months each, suspended for three years, together with fines of 500 zlotys. The verdicts had been confirmed by the appeal court.

10. The second case had involved two skinheads who had been found guilty of crimes under the Criminal Code for having beaten a Romanian woman and a black Swedish woman. Both had received two-year prison sentences suspended for five years and a 1,000 zlotys fine. The two men had also been put on probation and one had been required to undergo psychiatric treatment, because the crimes had been committed under the influence either of drugs or alcohol.

11. Other cases were still pending consideration by the courts.

12. Ms. DABROWIECKA (Poland), replying to questions about the status of international law vis-à-vis domestic law, said that under the new Constitution, international treaties, once ratified, constituted one of the sources of national law, following their publication in the official gazette. The provisions were applied directly unless their application required the promulgation of a special law or act. No such law or act had been necessary in the case of the Convention, and there had been no instance in which the absence of such a law or act had prevented the provisions of the Convention from being applied. Existing legislation, particularly constitutional guarantees, criminal sanctions and bilateral treaties, together with a number of administrative laws and acts, had provided a compact legal system under which the rights addressed in the Convention were fully guaranteed.

13. With regard to questions concerning the distinction between the rights of Polish citizens and non-citizens, section 2 of article 67 of the previous Constitution had guaranteed equal rights only for Polish citizens. That situation had been changed, and article 37 of the new Constitution now provided that all people under the jurisdiction of the Republic of Poland could enjoy the freedoms guaranteed by the Constitution.

14. With regard to population statistics, current Polish law prohibited the collection of statistics concerning ethnic origin, so no official statistics were available. Those in the report had been estimates and had come from two main sources. The General Statistical Office had conducted two surveys in 1992 which had yielded some information on minorities, as the questions had included historical background and membership of associations. Information had also been obtained from various churches. The first survey had concerned civil servants in the communes and the second the main minorities' associations. The considerable discrepancy between the information yielded by the questionnaires and information from outside the country showed that there was clearly a need for demographic statistics on minority groups; the Committee's questions would be forwarded to the competent authorities.

15. With regard to recommendations by international institutions in connection with the gathering of information and conducting of surveys, the delegation apologized for any misunderstanding. He was informed that, pursuant to recommendations made by EUROSTAT and the Statistical Commission, data on ethnic origins and religious faiths could be collected on a voluntary basis. There was no prohibition in that regard as the report had stated.

16. Procedures were being completed with regard to Poland's declaration in respect of article 14 of the Convention and, as stated the previous day, the declaration would be made in three to four weeks' time. The delay had been due solely to the heavy workload resulting from the number of activities in which Poland had recently been involved and its commitment to live up to its international obligations.

17. A number of questions had been raised on national minorities. All national minorities enjoyed the same rights to stand for election as Polish nationals. The German and Ukrainian minorities were already represented in Parliament without being accorded any special treatment. Minority representatives were free to set up their own electoral committees and enjoyed the benefits and facilities described in the report. Any parties they formed could be included in the list of political parties. The fact that some minorities were scattered over a wide area, while others were clustered within particular areas could have an impact on whether or not they were elected.

18. With regard to bilateral treaties, Poland had concluded good neighbourliness treaties with Lithuania, Belarus, Ukraine, Germany, the Czech Republic, the Slovak Republic and the Russian Federation. All those treaties contained similar provisions with regard to the protection of minority rights. They guaranteed equality before the law and legal protection, prohibited discrimination, ensured the freedom to belong to minority groups, freedom of expression and freedom to enjoy and develop their own identity and to speak their own national languages, to use their own first names and surnames, to learn their mother tongue and to be educated in and to study their mother

tongue and their national history and culture. Minorities also had the right to open their own cultural institutes and were guaranteed freedom of association. They had the right to disseminate and have access to information in their own language and to the mass media, and to have their own media. Freedom of religion and conscience were also guaranteed, as was the freedom to participate in public life and to establish contacts abroad. In addition to all essential minority rights, the treaties contained clauses concerning loyalty to the Polish State. The right to territorial autonomy was not guaranteed in the case of secession. Bilateral treaties enjoyed the same status as other international treaties.

19. The reference in paragraph 12 of the report to "minorities of an emigration nature" was a mistake in translation. It referred to minority groups which had left their own countries for a variety of reasons.

20. There were about 120 associations of national and ethnic minorities, of which 11 had links with the Bureau for the Culture of National Minorities. No associations were forbidden to cooperate with the Bureau, but not all of them wished to do so: the initiative lay entirely with the association itself.

21. Members had said that not all children from minority groups were taught their own language. That was true, but there were no restrictions on mother-tongue teaching in minority languages: it was always provided if the parents wished.

22. Members had questioned the assertion in paragraph 10 that Poland had "ceased to be a multinational country" after the Second World War. However, race and nationality were not the same thing: Poland certainly did not deny the existence of ethnic minorities within its borders. The statement was certainly no longer part of government policy.

23. On the subject of restrictions on the implementation of the Convention, Poland had lodged one reservation against article 22 of the Convention, but that reservation had since been withdrawn, and Poland now accepted the jurisdiction of the International Court of Justice in any dispute connected with the Convention.

24. Members had asked about the eviction of a group of Gypsies from their camp in Warsaw. The eviction had been carried out for reasons of hygiene, since the camp was in a damp spot by the River Vistula, liable to flooding and with no sewerage facilities. The authorities had offered the Gypsies a better site on the edge of the city, where their children could have gone to school, but they had refused. Many of the group were in Poland illegally, without valid identity papers, and they had been deported.

25. With regard to the implementation of the economic, social and cultural rights outlined in the Convention, it was true that those rights had been somewhat neglected in the transformation of Polish society, but that neglect had not resulted in any great increase in racial discrimination. The Polish Government was now trying to improve the situation with foreign assistance, including aid from Germany for the German minority in Poland.

26. In response to questions about the implementation of article 6 of the Convention, dealing with legal protection against acts of racial discrimination, he said that under article 23 of the revised Civil Code, private property, individual dignity and freedom of conscience were now subject to the civil law, and a case could be brought before the court if those rights were infringed. As well as putting an end to the offending behaviour and remedying its consequences (for instance, by printing an apology in the press), offenders could now be obliged to pay financial compensation.

27. Members had asked about the publicity given to the Convention and the Committee's work in Poland. Poland's periodic report would not be published, but it would be publicized, along with the Committee's concluding observations, in a press conference by the Ministry of Justice. The periodic report was prepared by the Ministry of Justice together with other competent government institutions, such as the ministries of education and culture and statistical offices.

28. As to whether the definition of the term "racial discrimination" contained in article 1 of the Convention had been included in the new Constitution, the exact wording of article 1 was not used. The new Constitution stated in more general terms than the previous one, that all persons were equal before the law and had the right to equal treatment by the authorities. Other articles of the Constitution guaranteed individuals' right to a private life, dignity and reputation, freedom of movement, freedom of conscience and freedom of association, all of which were rights and freedoms mentioned in the Convention. All those provisions were designed to prevent discrimination.

29. Members had asked about the implementation of article 4 of the Convention, dealing with racist propaganda and racist organizations. The authorities were very sensitive to issues of racial discrimination, and the few cases of racial discrimination which arose were dealt with promptly and fully covered by the media. In some cases, the matter was taken up by parliament or the Ombudsman.

30. The new Criminal Code expressly prohibited racial discrimination. In a number of cases, it had proved impossible to secure a conviction, either because the perpetrator could not be found, or because he/she could not be held legally responsible. Where the offender was a minor committing a relatively minor first offence, such as distributing leaflets or putting up posters, the usual penalty was a period of probation. The penalties for all the offences described in article 4 (a) of the Convention were defined by the Criminal Code, and had not changed in the new version.

31. In respect of article 4 (b), she said that article 13 of the new Constitution prohibited political parties or other institutions whose status advocated totalitarian practices, fascism, communism, Nazism, or racial or national hatred. Membership of such a party or organization would be an offence under the Criminal Code. However, a number of ethnic parties had been founded, for instance a Belarusian party. Poland had submitted information on that issue to the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, which was available for consultation at the Centre for Human Rights.

32. Mr. van BOVEN thanked the Polish representatives for their extensive replies and trusted that further information would be included in Poland's next periodic report.

33. He was still concerned about the case of the group of Roma who had been evicted from their camp in Warsaw. The Committee often had to consider the situation of people whose lifestyle did not fit in with conventional, well-ordered society, but whose rights and dignity must still be preserved. In the present case, it appeared that the Warsaw authorities had offered the Roma group an alternative camp site, even though some of them had been in Poland illegally, and had only deported them when they had refused. Was that the case? And was anything known of their fate since then?

34. Mr. RECHETOV thanked the Government of Poland for sending such a high-ranking delegation to meet the Committee. In response to a question about anti-Semitism in Poland, the Polish representative had clearly attached great importance to the issue answering the question at length. However, in his opinion, anti-Semitism was a relatively minor problem in Poland. He hoped that the Committee's concluding observations would not give the impression that anti-Semitism was one of the major issues covered.

35. Ms. DABROWIECKA (Poland) said that, with regard to deportation of the Roma, some of the people who had lived in the camps had stayed in Poland but had been dispersed. She could not give a definitive reply to the assertion that the absence of documents had been used as a pretext for deportation. It had originally been proposed that some of the people should be relocated to another part of Warsaw, and the only people deported had been those without documents and those who had expressed an interest in returning to Romania. The question of different lifestyles did apply to Poland, as it did to other European countries; she would ask for more details on the matter.

36. Mr. CIECIERSKI (Poland) said the Government would willingly follow up the suggestion that the next periodic report should contain more information on positive developments in the protection of the rights of minorities, including their right to vote and their protection under Poland's bilateral treaties with its seven neighbouring States.

37. Mr. SHAHI (Country Rapporteur) said the delegation had commendably touched on all the points raised by the Committee, if not to the Committee's entire satisfaction. The new Constitution placed the Convention on the same footing as other international treaties and agreements ratified by Poland after the Act of 7 April 1989 revising the Constitution and as the European conventions to which it was a party, which were considered part of the domestic legal system. That element of rather artificial discrimination, which depended on the date of ratification of the international conventions, was therefore removed.

38. He understood that some of the provisions of the 1952 Constitution - in particular, those dealing with equality of rights in the political, economic, social and other spheres banning certain kinds of organizations and guaranteeing equality of political rights - were also set forth in the new Constitution. He also presumed that various articles of the Criminal Code

cited in both the fourteenth and twelfth periodic reports and representing substantial fulfilment of Poland's obligations under article 4 of the Convention would remain intact in the new Criminal Code.

39. He asked the delegation to provide more reliable statistics on national and non-Polish or ethnic minorities, even though the law prohibited putting questions about ethnic origins to members of minorities. The statements that Poland was not a multinational society but that it nonetheless had minorities were not mutually contradictory but perhaps involved semantics.

40. He welcomed the details on the substance of the bilateral agreements with neighbouring countries on guarantees of minority rights, some of which were considered by the United States Department of State to be near-ideal; they had certainly set a good model. The next report should, however, provide the information on implementation of each article in accordance with the Committee's guidelines. In any case, the situation in Poland in terms of its fulfilment of its obligations under the Convention was far better than what had been reflected in the twelfth periodic report.

41. The Committee looked forward to Poland's declaration under article 14 of the Convention recognizing the Committee's competence to receive and consider communications.

42. With regard to Poland's bilateral treaties, the delegation had stated that the right of territorial autonomy was not guaranteed in the case of secession. While minorities were not entitled to secession, that statement raised the question of the extent to which minorities living in compact areas, such as the Germans in Silesia and Pomerania, who could not establish self-government, had political autonomy.

43. He hoped that those children of minority communities, or their parents, who expressed interest in receiving instruction in their own language were afforded the possibility of doing so. It had previously been stated that that depended on the availability of State resources. However, since Poland seemed to be doing well in its transition to a capitalist economy - with 6.5 per cent economic growth, and unemployment not much higher than in western Europe - it should be able to spare resources for improving the condition of the minorities, in particular the Roma.

44. The next report should elaborate on the delegation's statement that, owing to the changes under way in Poland, economic and social rights had been somewhat neglected and that some minorities, such as the Germans, were better off because they enjoyed assistance from abroad.

45. While article 13 of the new Constitution, which prohibited totalitarian political parties or those based on national hatred, did satisfy the requirements of article 4, paragraph 2, of the Convention, it did not cover organizations which, for instance, propagated ideas of racial superiority but did not have explicitly political aims. In that respect more explicit legislation was needed. Through its own laws Poland had given effect to the substance, if not the letter, of many provisions of the Convention, but the Committee was still troubled that the Government seemed to consider the Convention to be self-executing. In fact, the Convention required the

enactment of legislation to penalize violations. Polish law did provide for punishment, but some parts of the Convention could not be said to be self-executing, and might therefore require the enactment of statutory legislation.

46. The CHAIRMAN thanked the Polish delegation for a most satisfactory exchange of views and looked forward to continuing cooperation.

47. The delegation of Poland withdrew.

Review of the implementation of the Convention on States parties whose reports are excessively overdue

Niger

48. Mr. AHMADU (Country Rapporteur) said he had just been informed that the eighth to tenth periodic reports of Niger, which were to have been considered by the Committee at its 1223rd meeting, had arrived, in French; their consideration could perhaps be postponed to the Committee's fifty-second session.

49. It was so decided.

Haiti

50. Mr. de GOUTTES (Country Rapporteur) noted that the Government of Haiti had not submitted a report to the Committee since its ninth report in 1990. In considering Haiti along with other States parties whose reports were long overdue, the Committee should bear in mind the instability, violence and dire poverty that had characterized the situation there in the recent past. Haiti's reconstruction efforts should be encouraged by the Committee, which was sensitive to its request received on 30 July 1997 for extension of its deadline for submission of its next periodic report. The situation in Haiti was being examined now in a spirit of cooperation and in the light of Haiti's exceptional circumstances, and to inform Haiti of the main points it would like it to address in its next report, which should be focused on its implementation of the Convention.

51. He then gave an overview of recent developments in Haiti, beginning with the election in 1990 of President Jean-Bertrand Aristide and his overthrow by the military almost a year later. Efforts by the United Nations and the Organization of American States (OAS) to resolve the crisis had failed. Likewise, international sanctions had been to no avail. Only after negotiations between the former United States President Jimmy Carter, and the de facto President of Haiti, Mr. Jonnansaint, had President Aristide been able to resume power in 1994 following the arrival of a multinational force foreseen in Security Council resolution 940.

52. The final restoration of constitutional order had been signalled by the holding of presidential, legislative and local elections in 1995. President Aristide had been succeeded by President Préval and after a series of appointments and resignations Mr. Rosny Smarth had finally been appointed Prime Minister.

53. Throughout its crisis the United Nations had been offering Haiti support through several missions, the most recent being the United Nations Transition Mission in Haiti (UNTMIH), with a four-month mandate, provided for under Security Council resolution 1123 of 30 July 1997.

54. Violence and crime, particularly by armed gangs, were rife, casting doubt on the process of democratization after the withdrawal of the international force. Former President Aristide had formed a new political movement, LAVALAS. Meanwhile, the Parliament had approved massive cuts in public spending and a privatization programme, which had qualified Haiti for IMF aid, but the political situation had become tense after the first round of legislative by-elections marred by irregularities and the indefinite postponement of the second round of elections. The Prime Minister had resigned in June 1997 and was due to be officially replaced shortly.

55. Of Haiti's 6.8 million inhabitants, 85 per cent lived below the absolute poverty line; 1996 figures showed per capita income at US$ 300, a 2.9 per cent growth rate and 70 per cent and 77 per cent unemployment and illiteracy rates, respectively.

56. President Préval had taken further steps to turn the country round, including public sector and agrarian reform and rehabilitation of public utilities. Gross domestic product (GDP) was up, inflation down, and international financial aid had been renewed.

57. On the human rights front, a report on gross human rights violations committed during military rule between 29 September 1991 and 15 October 1994, had been submitted to the President by a national truth and justice commission. According to Amnesty International's 1997 report, the Commission had reported 8,650 violations by military and paralimitary groups, including enforced disappearances, extrajudicial executions and rape. Names, where known, had been given in an appended unpublished document with the Commission's recommendation that they be conveyed to the judicial authorities for further action. The recommendations in the report, which also related to judicial reform, compensation for victims and action in the event of sexual abuse had not been acted upon by the Government to date, despite the urgings of the United Nations Commission on Human Rights.

58. Proposed reforms of the seriously deficient judiciary were still pending approval by the National Assembly while, according to Amnesty International, the violators of human rights were still not being tried for past crimes.

59. Turning to recommendations for future periodic reports, he said that Haiti's assertion that there was no racial discrimination notwithstanding, the State was nonetheless required to provide for legislative and other measures to eliminate but also to prevent discrimination and to serve notice to the people of its stance on the issue. Furthermore, the absence of complaints and legal action prompted by racism was not necessarily a positive sign. There was cause to wonder whether people were aware of their rights, whether they trusted the police and the judiciary and whether the authorities gave the question of racism due attention - all questions which should be addressed in the next report. The alleged absence of any racial discrimination was, moreover, incompatible with reports referred to by the former Country

Rapporteur in 1990 of racial tension and of persistent discrimination on the labour market. Care should be taken to confine the report to Haiti's implementation of the provisions of the Convention and to avoid digressions on issues of relevance to other treaty monitoring bodies.

60. Precise, updated socio-economic data were required in the next report, including demographic and ethnic breakdowns, the usual indicators of non-integration of the most disadvantaged members of society, including data on unemployment, homelessness, morbidity and mortality rates, crime, drug addiction, alcoholism, prostitution, suicide, incarceration, etc. Racial discrimination between blacks, mulattoes and whites and discrimination between urban and rural dwellers should also be discussed.

61. The Committee awaited information on provisions in the Penal Code and other instruments to prosecute and punish all forms of racism under article 4 of the Convention, as well as measures taken by the State to promote and disseminate the principles enshrined in the Convention among Haitians and to encourage the work of human rights NGOs.

62. Finally, the Committee might invite the Government of Haiti to avail itself of the assistance afforded by the Centre for Human Rights in preparing its next periodic report.

63. Mr. RECHETOV commended Mr. de Gouttes' update on Haiti and noted that respect for human rights in Haiti was conditioned by the presence of international forces in Haiti. He was concerned about the limited focus of the national truth and justice commission on only human rights violations occurring between 1991 and 1994, leaving uninvestigated those crimes perpetrated outside of that specific time-frame. The international community should be urged in the Committee's recommendations to bring its influence to bear to change the situation in Haiti.

64. Mr. YUTZIS said that the international community had neglected to provide the necessary resources to assist Haiti in solving its very serious problems, although there were aspects of its history that commended themselves to the respect of the international community.

65. The CHAIRMAN suggested that the Committee inform the Government of Haiti that it had received its request for an extension of its deadline, had discussed the situation and would provide it with a copy of the provisional summary record of the discussion. While the Committee recognized the difficult circumstances faced by Haiti, it was keen to resume dialogue, even if Haiti could not provide all the information the Committee requested.

66. Mr. ABOUL-NASR suggested delaying consideration of Haiti's report because there was too much uncertainty about who was in charge and answerable for human rights there. The Committee should confine itself to requesting only information on racial discrimination and avoid adopting too broad a human rights perspective. He hoped that Mr. de Gouttes' draft would be concise.

67. Mr. van BOVEN endorsed the request for a succinct draft, which should be included in the Committee's annual report so that the General Assembly and the wider public would know of the Committee's concerns.

68. Mr. AHMADU said that the Committee might be asking too much of Haiti at the risk of alienating its Government and should use diplomatic language that avoided singling out Haiti. As for demographic data, it was a sensitive issue in the Caribbean and might not be forthcoming.

69. Mr. VALENCIA RODRIGUEZ agreed that Haiti was in dire straits and reiterated the call for restraint in making requests of its Government with which it might be unable to comply.

70. Mr. de GOUTTES welcomed the Chairman's suggestion that the Committee enclose the summary record with its reply to Haiti's note, providing the summary record was ready on time.

71. He agreed that Haiti was experiencing great difficulty and had other priorities that left its Government little time to provide all the information requested. He accordingly endorsed Mr. Ahmadu's proposal for an indirect approach to the wording of the Committee's reply, supplemented by a referral to the Centre for Human Rights for technical assistance.

72. The CHAIRMAN said he took it that the Committee thus wished to conclude its consideration of the situation in Haiti.

73. It was so agreed.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3) (continued)

74. The CHAIRMAN said he took it that the Committee did not wish to alter its decision to consider Israel on 11 August under the early warning and urgent procedures as proposed in the letter to the Chairman from that country's Permanent Representative, dated 7 August. The Representative would be informed accordingly, with Mr. van Boven (Country Rapporteur) drafting a reply.

75. It was so decided.

76. Mr. GARVALOV said that the reply to the letter should explain why the Committee was taking up Israel on 11 August; the State party should also be fully aware that the Committee had granted its request for postponing consideration of its periodic reports.

77. Mr. RECHETOV said that any special wording as to the reasons for its decision would be setting a precedent and would be tantamount to adopting a position on the substance of the issue. Instead, the Committee should inform Israel that it was adhering to its earlier decision to consider the question of Israel under early warning and urgent procedures and consider the periodic reports at its next session. Those Governments whose reports had been submitted and were to be considered at the fifty-second session should be informed of the substance of the Committee's decision and of what was expected of them.

78. The CHAIRMAN agreed with Mr. Rechetov, adding only that on a previous occasion the Committee had put the State party on the list for consideration under the early warning and urgent procedures and had addressed some specific

questions to it but had not received a reply. He also agreed that the Committee's arrangements for briefing sessions with States parties should be improved.

79. Mr. ABOUL-NASR said he generally agreed with the approach proposed by Mr. Rechetov, as the State party was well aware of the Committee's procedure. The Committee should not be drawn into a response to false statements and accusations against the Committee and the Secretariat and should keep the wording simple.

80. Mr. van BOVEN said the Committee's reply should stress the importance of the presence of the State party during consideration of the question. When the Committee set the agenda for its fifty-second session, it should make sure that all those concerned, and other interested parties, were informed immediately.

The meeting rose at 12.55 p.m.

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Fifty-first session

SUMMARY RECORD OF THE 1224th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 8 August 1997, at 3 p.m.

Chairman: Mr. BANTON

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Twelfth periodic report of Sweden

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum to be issued shortly after the end of the session.

GE.97-17734 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Twelfth periodic report of Sweden (CERD/C/280/Add.4; HRI/CORE/1/Add.4)

1. At the invitation of the Chairman, Mr. Magnuson, Mr. Perklev and Mr. Lindqvist (Sweden) took places at the Committee table.

2. Mr. MAGNUSON (Sweden) pointed out that, in just a few decades, Sweden had become a multicultural society, to the point where first- and second-generation immigrants now made up nearly 20 per cent of its population.

3. The Swedish Government, which was convinced that effective integration of refugees and immigrants was an essential basis for good ethnic relations, had for a number of years had reason to believe that that goal was being achieved through its policies. However, since the end of the 1980s, the integration process had encountered increasing difficulties: immigrants appeared to be in a less favourable situation than the rest of the population, their situation tended to grow worse and, as in other European countries, their integration had proved to be a more complex process than had initially been thought.

4. The Swedish Government considered the improvement of its integration policies to be one of its most important tasks, and was convinced that it had to do whatever was necessary to ensure that equality and tolerance would prevail, not only in principle but also in practice. That called for the adoption of new policies in different areas of society and at different levels, accompanied by changes in the administrative structure. In September 1997, a major bill on new integration policies was to be submitted to the Swedish parliament. It had been drawn up largely on the basis of the report by the commission assigned the task of reviewing Swedish integration policies.

5. The Act against Ethnic Discrimination had come into force on 1 July 1994. Among other things, it should have resulted in a number of charges being brought for ethnic discrimination at the workplace, but proceedings had been initiated in just one case, and the Government was considering amending the Act once a full review of its application had been completed in December 1997. The situation of immigrants and refugees on the labour market was crucial to their integration, and it was considered increasingly important that the ethnic composition in the workplace should reflect that of the population as a whole. Various initiatives had been taken, with employers and trade unions often acting in concert. The Government, for its part, would take steps beginning in autumn 1997, to increase the number of employees with a foreign background in the civil service.

6. Expressions of racial or ethnic violence were rare in Sweden, but the Government, convinced that it should do everything possible to avert them, had commissioned the Director-General of the National Council for Crime Prevention to analyse racially or ethnically motivated crime and its causes and to make suitable proposals.

7. To improve the situation of the Roma, which was less favourable than that of the rest of the population, the Government had appointed a working group, which included representatives of that ethnic community. The Government was in the process of studying the group's report, which specifically proposed that the Roma should play a more active role in efforts made to improve their situation.

8. Lastly, Sweden had established a coordination committee for the European Year against Racism, which was chaired by a former deputy prime minister.

9. Turning to more specific matters, he said that the National Council for Crime Prevention had published its report on crime among immigrants, which confirmed the provisional findings of the twelfth periodic report of Sweden: immigrants were clearly overrepresented among crime suspects, although there were significant variations between immigrant groups from different countries; second-generation immigrants were not as overrepresented as those of the first generation, and 85 per cent of immigrants had not committed any offences whatever during the period under review.

10. The security police had presented a report on acts of violence, including racial crimes, committed in Sweden in 1994 and 1995. The statistics did not lend themselves to comparison, as the collection methods had changed, but they did not appear to indicate any alarming increase in that type of criminality in Sweden. The report, which was the first of its kind, reflected the introduction of a new system under which the police were to report any offence which supposedly had a racial motivation and which therefore made it possible to monitor the situation more closely. In 1995 there had been no convictions for agitation against ethnic groups, although two persons had been convicted of unlawful discrimination.

11. In October 1996 the Supreme Court had ruled that the wearing of traditional Nazi symbols in public could be considered as agitation against an ethnic group, and was therefore a punishable offence under the Penal Code. That would appear to obviate the need for the new provision that the Government had planned to adopt when it had drawn up the twelfth report (para. 84).

12. Mr. YUTZIS (Country Rapporteur) said he would await publication, in October 1997, of the report by the National Council for Crime Prevention and, in December 1997, of the review of the Act against Ethnic Discrimination, before raising certain questions. He noted with interest the Supreme Court ruling which had established a legal precedent under which the wearing of Nazi symbols was equivalent to propaganda.

13. Referring to paragraph 5 of the report under consideration, he asked why Sweden had no legal definition of minority status when the country acknowledged the presence of at least three minority groups. There was also a contradiction between the end of that paragraph, which stated that the social situation of those minorities did not differ significantly from that of the majority, and the end of paragraph 7, according to which the position of the Roma was less favourable than that of the rest of the population. The special situation of the Tornedal Finns was also worthy of mention, for that minority group had lived for centuries on the Finnish-Swedish border and was no doubt

well represented in local bodies, but had not been recognized by Sweden as a linguistic minority. While the Swedish Government had confirmed the special status of Finnish and announced plans for bilingual education, Sweden had still not ratified the Council of Europe Charter for Regional or Minority Languages of 1992. Moreover the Roma, who were regarded not as a distinct minority but rather as immigrants, appeared to have fewer rights than other categories of immigrants and were dependent on social welfare. In that sense, it was disconcerting to note that paragraph 14 stated that immigrants were worse off than Swedes in most areas of society and that the gap was widening.

14. Turning to the application of article 2 of the Convention, and more specifically to the reference, in paragraph 22 of the report, to section 22, paragraph 10 of the Swedish Instrument of Government (protection against physical violations), he asked why the Prosecutor-General had refused to take action in the case of Sergio Nigreti, an Italian citizen injured while being held in solitary confinement in Sweden in 1993, and why the request for asylum by Monica Castillo Paez, who had arrived in Sweden in 1990, had been rejected, for the new positive refugee legislation adopted in January 1997 specifically provided for the possibility of granting political asylum to persons who would be in danger if they returned to their countries.

15. He noted, with regard to articles 2 and 4 of the Convention - which should be taken together, because they were inextricably linked - that a rather large number of racist political, university and other organizations had apparently been established in Sweden. Those organizations, which advocated a neo-Nazi ideology, had attacked Jewish property, synagogues and cemeteries, yet the authorities had not carried out any arrests or confiscated their publications, which remained in circulation. Neo-Nazi ideas were also disseminated in another way, which was all the more dangerous because of its emotional appeal, namely, through the music of certain rock groups. Of the some 250 European groups, Sweden had more than 50. Some of their promoters had obviously established links with cult magazines and recording companies to produce compact discs promoting neo-Nazi ideology. Even Sony had become involved through its subsidiary DADC, which had produced CDs for over 25 groups. Given the size of the companies involved and the number of concerts held, the authorities could not possibly have been unaware of what was going on, especially as a large number of German and English groups with such provocative names as "Das Reich", "No Remorse" and "Brutal Attack" were meeting with success in Sweden. The application of the Convention would inevitably suffer.

16. As for the situation of the Samis, he observed that although they had a Parliament, the Instrument of Government did not accord them any special status. The Government maintained that the rights of the Samis were protected, just as were those of all Swedes, and that it was thus pointless for the Instrument of Government to provide them with specific protection. Moreover, as was stated in the previous report (CERD/C/239/Add.1), the recognition of the Sami language as an official language would be extremely costly. He was nevertheless of the opinion that the Samis should be granted minority status, and their language officially recognized. He also wondered why the Samis' special hunting and fishing rights could be restricted while their exclusive right of reindeer-breeding was guaranteed, for they too were based on usufruct, a protected right that had been sanctioned since time

immemorial. According to paragraph 61 of the report, compensation was provided for persons injured by expropriation, but whereas it was possible to calculate the loss suffered by a breeder unable to produce and market reindeer meat, it was impossible to assess the losses incurred by those who could no longer wse the land for hunting and fishing, or who had to compete in their traditional hunting grounds with hunters whose methods - involving the use of dogs - were prejudicial to them. The Government undoubtedly wanted to ensure equal hunting and fishing rights for all citizens, but in so doing it deprived the Samis of control over those activities.

17. The right to practise the religion of one's choice was of interest to the Committee, insofar as the religions of minorities were often different from those of the majority. In countries such as Sweden which had a State religion, he knew from experience that there was a great temptation to attach more importance to that religion than to the others; that would inevitably create problems for the faithful of minority religions. In his view, the principle of State religion should be abolished throughout the world.

18. Mr. GARVALOV congratulated Sweden on the efforts it had made to curb racism both within the country and outside, as well as on the statement made in paragraph 2 of its report that Sweden had "in just a few decades developed ... to a multicultural society". Few countries could say as much.

19. He asked for clarification with regard to paragraph 3, which indicated the size of the "larger groups" of foreign origin living in Sweden. That designation was far from satisfactory, for while the question of immigrants, refugees and minorities was discussed later in the report, the composition and nature of those "larger groups" were never specified. Furthermore, neither the Roma, nor the Tornedal Finns, nor yet the Samis were mentioned among those groups, although the Samis, for example, numbered between 25,000 and 30,000.

20. Sweden had considered ratifying the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities. Had it decided to ratify them, and if so, had it defined the term "national minority"?

21. According to paragraphs 9 and 11, Sweden's policy in combating racism and ethnic discrimination was based on integration, which it distinguished from assimilation, and to which there was no alternative. It would therefore seem that immigrants, refugees and members of ethnic minorities had to integrate if they wanted to enjoy equal opportunities and remain in Sweden. Yet many countries in Europe and elsewhere were more flexible, and Committee members themselves had stated repeatedly, both individually and collectively, that the equality of various ethnic groups could and should be achieved by specific legislation safeguarding their ethnicity, language and national heritage. Were the Samis, the Tornedal Finns and the Roma considered to be integrated? If that were the case, how could that be reconciled with the idea of ratifying the European Charter and Convention?

22. Paragraphs 14, 17 and 38 of the report clearly stated that the gap was widening between refugees and immigrants on the one hand and Swedes on the other, that unemployment, segregation and racism were the most alarming problems currently faced by society, and that the number of racial crimes had

been rising since 1980. Yet paragraphs 158 and 159 claimed that xenophobia had declined slightly, and that the majority of the population appeared to have a tolerant or positive attitude towards immigrants. As xenophobia was one aspect of racism, it was difficult to reconcile those contradictory statements.

23. The various concrete measures that Sweden had already taken, together with those described in paragraphs 137 and 157 of the report, were, in his view, on the whole, praiseworthy.

24. Mrs. ZOU, referring to the last sentence of paragraph 7, asked what Sweden was doing to guarantee the Roma minority access to education - and thus to employment - and to improve their living conditions. In paragraph 101 the Government had described some of the steps it had taken to promote the entry of refugees and immigrants into the labour market, but in the light of employers' reluctance to hire them, she thought those efforts were still inadequate. She welcomed the information given in paragraph 112 about what the Government was doing to resolve housing segregation problems affecting certain minorities, and asked for information on the findings of the government commission responsible for drawing up housing policies which was due to complete its work in September 1996.

25. With regard to the increase in the number of racist crimes reported in paragraph 38, she would like to know whether the courts had dealt with any cases of racism, as well as the number and outcome of such cases, if any, and whether the Government had carried out an in-depth study of such crimes so as to be in a better position to prevent their occurrence. She noted, as had Mr. Garvalov, the contradiction between that paragraph and paragraphs 158 and 159 and requested an explanation.

26. Mr. de GOUTTES commended the Swedish delegation on the quality of its twelfth periodic report, which took into account the Committee's guidelines on form and content. Sweden's report revealed that the country had experienced a far-reaching transformation because, after having long been ethnically homogenous, it had in just a few decades become a multicultural society, with the problems that that inevitably entailed, namely, reservations on the part of the Swedish population about immigration and the emergence of social and economic indications of non-integration, including employment and housing problems, unemployment, crime and drug addiction. It also contained some very useful information on the provisions of the Penal Code designed to curb racial discrimination, as well as on the various bodies and institutions established to combat racial and ethnic discrimination.

27. With regard to the question of immigration, paragraph 17 referred to the bill on new integration policies that the Government had intended to submit to Parliament in early 1997. It would be useful to know a little more about the nature of that bill and what had happened to it. He also requested information about the conclusions of the reports of the Immigration Board mentioned in paragraph 110, concerning the difficulties encountered by immigrants and refugees on the labour market. He asked what action had been taken on the policy document drawn up by the National Police Board, which had

stressed that the police service needed more officers belonging to ethnic minorities, and whether there were any statistics on the number of police officers from ethnic minorities or immigrant groups.

28. With regard to the Act against Ethnic Discrimination, it was stated in paragraph 47 of the report that section 8 of the Act prohibited employers from disregarding job applicants because of racial or ethnic considerations. However, the prohibition applied only if the employer hired someone other than the person subjected to discrimination. Did that mean that a refusal to hire or recruit a person on racial grounds was not in itself considered an offence as long as another person was not hired? A limitation of that nature might well let discrimination go unpunished.

29. Referring to statistics on racially motivated crimes, he noted that according to paragraph 76 of the report the police intended to submit reports presenting more reliable information on the number of such crimes in the spring of 1997 and asked whether those reports were now available.

30. Finally, he asked whether the Ombudsman mentioned in paragraphs 42 et seq. was in any way associated with the drafting of the periodical report, and whether the Government could assign to the Ombudsman the task of disseminating and publicizing the periodic reports submitted to the Committee, along with the Committee's observations and conclusions?

31. Mr. WOLFRUM said he was struck by the fact that, as indicated in paragraph 32 of the report, section 9 of the Swedish Penal Code provided for the punishment of any businessman who, in the conduct of his business, discriminated against an employee, while paragraph 101 of the report referred to measures aimed at encouraging employers to hire non-Scandinavian immigrants and refugees. Surely there was a contradiction between those two approaches.

32. He welcomed the measures mentioned in paragraph 61 for the protection of the Sami people against expropriation of the land on which they bred reindeer, particularly as their right to do so was based merely on usufruct and as in most legal systems expropriation applied only to property. It was to be hoped that the Government would continue to protect that activity, which was essential to the preservation of Sami culture. On the same subject, he said it was his understanding that the Sami Parliament was basically an advisory body, and asked whether it also had any decision-making powers and, if so, in which fields. Moreover, why had Sweden waited so long before establishing a Sami Parliament?

33. It was interesting to note in paragraph 82 that on 1 July 1994 a new provision of the Penal Code had entered into force, imposing more severe punishment for racist crimes. However, the last sentence of paragraph 83 ("It is therefore not possible for a racist organization to exercise any activities without breaking the law") was puzzling. Did it mean that Sweden was attempting in a roundabout way to apply article 4 (b) of the Convention, or was there another provision in the Penal Code that prohibited racist activities? It appeared that article 4 (b) was not being fully applied, and as Sweden had not entered any reservations, clarification would be appreciated.

34. The fact that foreigners in Sweden had been able to vote in local elections was a positive step which very few countries had taken. However, voter participation in such elections was declining steadily, as was clear from the table in paragraph 92 of the report. What explained that decline? Sweden had also introduced exemplary education programmes in the languages of immigrants although, according to certain sources, funds for those programmes had been severely cut in the past three years. He asked whether that was the case.

35. In conclusion, he noted that there was a State religion in Sweden, namely, Lutheran protestantism. While that was quite normal, it was strange, if not discriminatory, that everyone, including immigrants not belonging to that religion, was obliged to pay a tax to the church. He requested clarification of that obligation even though he had heard that there were plans to abolish it in 2001 or 2002, subject to Parliamentary approval.

36. Mr. VALENCIA RODRÍGUEZ noted with satisfaction that Sweden recognized the multicultural character of its society and that the entire population of the country enjoyed equal rights. However, paragraphs 7 and 14 revealed that the Roma and immigrants were in a less favourable situation than the rest of the population. What was being done to help those groups overcome their difficulties, and what were the results? Did Sweden plan to do something to provide more precise statistics on the size of minority groups in the country, and specifically of the Tornedal Finns, the Roma and the Sami people?

37. It was difficult to understand the term "unlawful discrimination" used in paragraph 32. Was the meaning the same as in paragraph 48 - treatment motivated by differences that were not based on objective grounds? Who would be able to decide quite impartially whether or not discrimination was unlawful? Would that be the privilege of the employer? He also requested clarification of the term "anti-racist counter-violence", used in paragraph 38, and asked exactly what steps had been taken by the Prosecutor-General to combat racist crimes.

38. Noting that paragraphs 60 to 69 dealt at length with the functions and responsibilities of the Sami Parliament, he said it would be interesting to have more detailed information about the social, economic and cultural measures which were being considered to improve the situation of the Samis. He also asked whether the Government intended to increase the scope of measures already adopted in favour of that minority.

39. According to paragraph 75, statistics for 1993 indicated that attacks on refugees had not been organized. How had the Government reacted to that situation and with what results? Moreover, which legislative provisions prohibited the existence of racist organizations as such.

40. He too was concerned about he decline in voter participation among foreigners in local elections. Had any efforts been made to determine why that was so and had anything been done to reverse the trend?

41. Mr. LECHUGA HEVIA noted that, according to the report, most Roma were Swedish citizens and therefore enjoyed complete equality of rights and obligations, and yet it was recognized, at the end of paragraph 7, that the

social position of the Roma was less favourable than that of the rest of the population. Moreover, paragraph 11 stated that racism could be effectively counteracted only if everyone was dealt with on an equal footing, yet according to paragraph 14, the commission assigned to review integration policies had concluded that immigrants were worse off than Swedes in most areas of society. How could those contradictions be explained?

42. He asked what was meant by the term "unlawful discrimination" in paragraph 32 and said he failed to understand the statistics presented in paragraph 39, which had been collected by the National Council for Crime Prevention, or the connection between that paragraph and the application of the Convention. Moreover, referring to article 4, he raised a question applicable to all European countries that did not respect the provisions of that article: why were steps not taken to prohibit racist organizations?

43. Mr. DIACONU noted with satisfaction the many administrative and legislative measures and the initiatives of society in general which had been taken to implement the Convention. However, he noted that although racist propaganda and violence were punishable under Swedish law, racist organizations were not forbidden, that could only lead to problems in ensuring the application of the Convention.

44. Mr. Diaconu was pleased to note that section 1 of the Act Against Ethnic Discrimination contained a definition of discrimination that was more complete than the one in the Convention, and welcomed the appointment, under section 2 of the Act, of an Ombudsman to combat ethnic discrimination in the workplace and in other fields. Under section 8, employers could not turn down a job applicant for discriminatory reasons, but that provision was only applicable if another person was hired in place of the person subjected to discrimination. He wondered what would happen if all the applicants for a given job were rejected for discriminatory reasons. It might be better to sanction discriminatory recruitment, rather than its consequences. Having said that, the Act was praiseworthy in that it gave unsuccessful job applicants and training and promotion candidates the right to receive information from the employer in writing on the comparable qualifications of the candidate selected.

45. With regard to the application of article 5 of the Convention, he welcomed the fact that the Samis were offered education in their mother tongue and in Swedish. He would appreciate further information on similar opportunities offered to other minority groups and on their situation, and specifically information regarding unemployment and the proportion of youths in those groups. He also requested additional information on the ethnic composition of the population and asked how many persons in Sweden had been born to immigrants.

46. According to paragraph 5 of the report, there was no official text in Sweden which described a specific group as being a national minority. Yet the same paragraph stated that three groups could be considered to fulfil the criteria of being minority groups, namely the Tornedal Finns, the Roma and the indigenous Sami people. What criteria were used? The question was all the more pertinent because section 15 of the Instrument of Government stipulated that no statute or regulation could cause unfair treatment of a citizen on the

grounds of his belonging to a minority. It would appear to be difficult to ensure application of that section without having defined the concept of a minority.

47. The CHAIRMAN, speaking as a member of the Committee, said he had recently visited a school near Stockholm where 95 per cent of the students were foreign born. In the light of the Committee's general recommendation XIX on article 3, the Chairman considered that to be a form of domicile-related segregation which should have been mentioned in paragraph 70 of the report, in which it was affirmed that there was no racial segregation or apartheid in Sweden. The schoolteachers had told him that children of immigrants, and especially those of Turkish origin, did not have the possibility of watching Swedish television programmes at home, as their parents had satellite dishes to receive Turkish television programmes. When the Convention was being drawn up it had admittedly been impossible to imagine that the media, as a result of technological advances, would in some cases, contribute to the perpetuation of segregation. In that connection he observed that article 1, paragraph 1 of the Convention referred to discrimination in public life, and not in private life.

48. Mr. SHAHI noted with satisfaction that the Swedish Government was taking steps to promote the better integration of immigrants, and that foreigners who had resided for over three years in Sweden had the right to run for office and to vote in local elections. He further welcomed the fact that, in several areas, foreigners residing in Sweden had parity of status with Swedish citizens, and asked how many immigrants from the groups mentioned in paragraph 3 had acquired Swedish citizenship. He further noted with interest that in Sweden there were many different kinds of multiracial associations which had existed for some time, many of which engaged in activities that were aimed at facilitating the integration of immigrants into Swedish society. In addition, the authorities provided funding for the projects and activities of such organizations, which was in conformity with article 2 (e) of the Convention: very few States did that sort of thing.

49. He would appreciate additional information on the functions of the Sami Parliament and on the proportion of Samis in the public service. The question of the Roma, the majority of whom had Swedish citizenship according to the report, but whose attachment to traditions did not enable them to become fully integrated into Swedish society, should be further examined by the Committee.

50. Mrs. SADIQ ALI noted that Swedish legislation reflected most of the provisions of article 4 of the Convention. However, the report said nothing about the application of article 4 (c). Did the Ombudsman against Ethnic Discrimination also ensure that the authorities and public institutions did not promote or incite racial discrimination?

51. After the Chernobyl nuclear disaster, Sweden had drawn attention to its harmful consequences for the Sami reindeer-breeding population. Had the Samis received any compensation? Had they been resettled?

52. Mr. YUTZIS noted with satisfaction that in July 1996 the Swedish police had confiscated compact discs in Uppsala, and that the manager of the "Tapes with danger" company which had distributed the CDs had been charged with the distribution of texts hostile to ethnic minorities.

53. Mr. SHERIFIS welcomed the fact that Sweden was one of the few countries in the world where foreigners had the right to stand for office and vote in local elections. However, he noted with concern that voter participation among foreigners was falling. He would like to know why, and how many foreigners actually stood for office in such elections. He also asked what was the proportion of Swedes of foreign origin who occupied or had occupied high-level posts in the public administration.

54. Mr. Sherifis said he was concerned about the xenophobia which had emerged in Sweden. It was, of course, also emerging in other countries, but the Committee could rightfully expect much of Sweden, which had always been in the forefront of the struggle against racial discrimination. In conclusion, he asked whether the authorities disseminated the excellent report on the application of the Convention among the public, along with the Committee's conclusions and recommendations.

The meeting rose at 5.50 p.m.

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Fifty-first session

SUMMARY RECORD OF THE 1225th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 11 August 1997, at 10 a.m.

Chairman: Mr. BANTON

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Twelfth periodic report of Sweden (continued)

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY-WARNING AND URGENT PROCEDURES

Israel

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Twelfth periodic report of Sweden (CERD/C/280/Add.4; HRI/CORE/1/Add.4) (continued)

1. At the invitation of the Chairman, the members of the Swedish delegation resumed their places at the Committee table.

2. Mr. MAGNUSON (Sweden), replying to questions raised by members, said that the Swedish Government took the issue of racial equality very seriously and had appointed many government commissions and working groups to investigate various aspects of the issue.

3. He informed the Committee that Sweden had in fact taken the necessary steps to accept the amendment to article 8, paragraph 6, of the Convention in 1993.

4. In response to questions about efforts to integrate people from various backgrounds into Swedish society, he assured the Committee of his Government's full commitment to what was a very complex task.

5. Regarding Sweden's interpretation of article 4 (b) of the Convention, which had been criticized in the past, the Government had set up a commission to investigate measures to counteract ethnic discrimination. The Commission had concluded that the existing law adequately fulfilled Sweden's responsibilities under article 4 (b). It had recommended changes to two laws which would have made organized racist activities illegal but the Government had not accepted the recommendations on the grounds that the proposed measures would be difficult to enforce, and a failed attempt to prosecute a racist group would give it undesirable publicity and lend its activities a spurious legitimacy. Also, the Government was anxious not to infringe people's right to freedom of association for legitimate purposes.

6. As to why Sweden did not have any legal definition of a "national minority", States parties were not obliged to draw up such a definition under the Convention. The Swedish Government considered that people should be able to decide for themselves whether they wished to be considered Swedes, Finns or Samis, for example. Moreover, because of the freedom-of-information legislation in force in Sweden, any official information regarding a person's ethnic origin would be freely available to anyone who wished to know it.

7. Members had asked many questions about the situation of the Sami minority in Sweden. Some 600 Samis still earned their living from reindeer herding; counting their families, that meant a total of between 2,000 and 2,500 people. Reindeer herders now used helicopters, snow scooters and other items of modern-day technology. The rest of the Sami population in Sweden numbered between 15,000 and 17,000, living mainly in the Stockholm area but also in the rest of the country. They occupied a wide variety of jobs: indeed, one was an ambassador.

8. Members had asked about the Sami Parliament. People wishing to register to vote in the elections to the Sami Parliament had to fulfil one or more of the following conditions: they must use the Sami language at home; their parents or grandparents must speak Sami; they must have a parent registered to vote for the Sami Parliament; and they must consider themselves to be Samis. In the first elections to the Sami Parliament in 1993, some 70 per cent of the 5,400 people registered to vote had actually voted. In the most recent elections in 1997, only 65 per cent of the 5,900 people eligible had voted.

9. The Sami Parliament also carried out some of the tasks of a public authority. For that reason, the Chairman of its plenary session, which was its main decision-making body, was appointed by the Government. However, the Parliament had been given considerable freedom to decide on its own working methods. Its responsibilities included the allocation of resources for the benefit of the Sami people, the management of the Sami school system, the promotion of Sami culture, and participation in public planning of land use, water use, etc. in cases which might affect Sami interests. It was also responsible for allocating resources from European Union programmes in favour of the Sami people. Another responsibility was the distribution of compensation for reindeer lost to predators such as wolves and bears.

10. Members had asked about the use of minority languages. The Committee referred to in paragraph 8 of the report, which was investigating the desirability of Sweden's adhering to the Council of Europe Charter for Regional and Minority Languages and the framework Convention for the protection of national minorities, was due to report in September 1997. The issue was more complex now because many more languages were being spoken in Sweden. For instance, many Finns had moved to Sweden after the Second World War, and there was considerable debate about whether Finnish should be considered a minority language.

11. A committee to promote the rights of indigenous people had been set up in 1995. It had organized seminars on land rights and exhibitions of Sami culture and traditions.

12. With regard to Sami land rights, Sweden had not ratified the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169, 1989), because it was not compatible with Swedish law. The land on which the Samis traditionally practised reindeer herding was State property: the Samis did not own the land, but they had a strictly protected right to use it for reindeer husbandry. In all other respects, the Samis had the same rights as any other Swedish citizens to own land.

13. There were a number of special Sami schools, but most Sami children went to ordinary schools. The Sami schools were subsidized by the Government. Sami children, like all other children whose mother tongue was not Swedish, had the right to education in their mother tongue.

14. The Government provided economic support for traditional Sami occupations such as reindeer husbandry, including compensation for reindeer lost to predators or killed on railway lines and for damage resulting from

the Chernobyl nuclear accident. Government financial support amounted to approximately SKr 150 million annually, of which SKr 40 million was compensation.

15. There were some 5,000 people with a basic command of the Sami language. The situation was complicated by the existence of several dialects, with no standard form. Fewer than 500 people spoke the southern Sami dialect, and it seemed unlikely that it would survive. All Samis also spoke Swedish.

16. Sami fishing and hunting rights were protected as part of their right of usufruct in their traditional lands. In particular, large amounts of compensation had been paid in connection with hydroelectric construction schemes in the 1950s and 1960s, which had affected Sami fishing and reindeer grazing.

17. Mr. LINDQVIST (Sweden), turning to the situation of the Roma population, said that the Roma enjoyed exactly the same legal rights as everyone else in Sweden: their problem was more a sociological one. Over the past decades the central Government, the municipalities and non-governmental organizations had undertaken many projects to promote their integration into Swedish society. However, the Government was still concerned about the Roma, and had set up a commission, with representatives from the Roma population, to analyse their situation and suggest improvements. The Commission had just published its report, and had recommended that, in any action to integrate the Roma people into Swedish society, they should be seen as individuals and actors, with their own resources to offer, rather than passive recipients of Government support. The Government should help the Roma to take responsibility for their own affairs and pursue their own priorities. The main focus should be on children and young people in order to prevent the marginalization of future generations. The Commission had further recommended that a single public authority should be responsible for initiating, coordinating and monitoring measures to assist the Roma population, but it had not yet been decided which authority would take on the task.

18. Members had also asked why participation by immigrants in local elections had decreased. In fact, the Government was going beyond its commitments under the Convention by allowing aliens to vote in local elections, but it was nonetheless concerned by the declining turn-out and had commissioned research on the subject. No clear answers had been obtained, but a number of possible reasons had been put forward. Many people who had settled in Sweden since the 1970s were refugees, who presumably intended to return to their own countries in due course and might therefore not be so concerned about influencing local affairs in Sweden. The number of foreign citizens eligible to vote might have been inaccurately recorded, since many people left Sweden without taking their names off the electoral register. National and local elections were held at the same time in Sweden, and it was possible that immigrants heard mainly the media coverage connected with the national elections, in which they were not entitled to vote.

19. The research described in paragraphs 158 and 159 of the report showed that public attitudes towards immigrants and refugees were very tolerant. It had also shown that intolerance was likely to grow in conditions of unfair

distribution of resources, lack of trust in political decisions, and lack of contact between different ethnic groups. The research findings would be used for future planning.

20. Members had asked about schooling for Roma children. All children in Sweden were supposed to undergo nine years' compulsory education. However, few Roma children completed their education, not because of the schools or the teachers, but because parents kept their children, particularly their daughters, away from school.

21. The provision of home language instruction for pupils whose mother tongue was not Swedish also went beyond Sweden's commitments under the Convention. The decline in the take-up rate for home language instruction was actually very small, from 59 per cent of immigrant children in 1991 to 54 per cent in 1996.

22. Regarding the situation of second-generation immigrants, it was impossible to describe "second-generation immigrants" as a group, as they included people from an enormous variety of countries, cultures, religions and socio-economic backgrounds. Some "second-generation immigrants" had been born abroad, some in Sweden, and some had one Swedish parent. It seemed more appropriate to classify them according to their socio-economic background rather than their ethnic origin. Extensive research had, however, revealed no difference in the school performance of children of immigrant origin, as compared with those of Swedish origin.

23. With regard to the situation in areas with high concentrations of immigrants and refugees, it was important to bear in mind that Sweden was one of the most generous countries in relation to the number of asylum-seekers accepted in relation to its population size.

24. In Sweden, as in all other countries, different socio-economic groups lived in different areas. More recently, that situation had increasingly assumed an ethnic dimension, and many immigrant-related problems had emerged, particularly in the major cities. In 1996, the Government had initiated and funded a number of pilot projects in key housing areas in an effort to improve the situation, basing its approach on the ideas and activities of the local population. While the municipalities had the main responsibility for conditions in those areas, it was also a national responsibility to ensure that the efforts were successful in the long term. The project results, once evaluated, would be distributed to other municipalities.

25. Statistics showed that over 50 per cent of applicants born abroad had been granted Swedish citizenship. The citizenship rules were extremely generous: in normal cases, citizenship could be granted after five years, in the case of refugees after three years, and if a person married a Swedish citizen, in two years. Seventy-six per cent of the people from the former Yugoslavia now living in Sweden had been granted citizenship, as had 62 per cent of the Turks, 87 per cent of the Lebanese and 79 per cent of the Ethiopians.

26. With regard to the Swedish State Church, Sweden was one of the few countries which gave financial support at the local and central Government levels to the religious activities of immigrant communities and made funds available for places of religious worship.

27. Mr. MAGNUSON (Sweden) expressed surprise at a suggestion made at the Committee's previous meeting in connection with paragraphs 38 and 39 of the report, to the effect that the Swedish Government did not take racist crimes seriously. In fact the opposite was true. The Swedish Government regarded any tendency towards racism in Sweden as a very serious matter.

28. Mr. PERKLEV (Sweden), responding to questions concerning the possible contradiction in the report between paragraphs 14, 17 and 38 on the one hand, and paragraphs 158 and 159 on the other, said that the fact that most immigrants and refugees were worse off than Swedes and that the gap was widening might be due to the economic recession. None of the research had found any evidence that it was the result of increased racism or xenophobia, or ascertained other motives. Racially motivated crime was in any event against the law. According to a Security Police report, most of the perpetrators were young people in the 15 to 19 age group, many of whom were skinheads or associated with skinheads, and more than half had previous convictions for other kinds of crimes. Generally speaking, most racially motivated crime was committed by a small group of people. The surveys referred to in paragraphs 158 and 159, on the other hand, showed that racism and xenophobia had decreased in recent years. Racially motivated crime was therefore not necessarily a reflection of public opinion.

29. With regard to the organizations mentioned by Mr. Yutzis, neither New Democracy nor Swedish Democrats could be considered racist, although both were right-wing political parties which were critical of the Government's immigration policies. Neither party supported racist idealogy nor was represented in Parliament. The White Area Resistance Group no longer existed. Other organizations had a very limited number of active followers and could hardly be considered to be formal organizations. According to the Security Police, such groups tended after a time to split into new groups. Most racially motivated crime was unconnected with any particular racist group. However small the group, the Government kept a close eye on them and monitored their activities closely.

30. Compact discs containing so-called White Power music did not appear to be important in spreading racism among young people. In December 1996, one person had been convicted of agitation against an ethnic group under the Fundamental Law on Freedom of Expression for producing and distributing such discs and had been sentenced to one month's imprisonment. The records had been confiscated. Another similar case was in progress, and other cases were pending. The production and distribution of compact discs of that kind was not censored under Sweden's constitutional law.

31. As to whether it was a punishable offence to wear black uniforms and ancient Nordic symbols at public meetings, the Supreme Court had, in October 1996, ruled that the wearing of traditional symbols in public might be considered agitation against an ethnic group and therefore punishable, but it

was difficult to define what kind of clothing or symbols were unacceptable and the matter could only be settled by the courts in the light of all the circumstances.

32. With regard to the two neo-Nazi marches which had taken place in 1996, while the Constitution guaranteed all citizens freedom of assembly and freedom to demonstrate, such freedoms could be restricted in the interests of public safety and public order. The police could not refuse permission for a march or demonstration on political or ideological grounds, but they could and would take action against the perpetrators of any crimes committed during such an event. At one of the demonstrations referred to, the police action had not been successful but folliwng the second, seven persons had been charged and convicted for agitation against ethnic groups; five of them had been sentenced to two months' imprisonment, and the other two, who were younger, had been fined.

33. With regard to questions in respect of paragraph 37 of the report, in addition to the information given, the Prosecutor-General had recently sent out questionnaires to police districts concerning the way in which racially motivated crime was handled. The questionnaires were due for completion by the end of August 1997 and would then be evaluated.

34. The National Police Board had held two seminars in 1996 on racism and xenophobia which had been so successful that several police districts had followed their example. In May 1997, the National Police Board had published a book to increase people's knowledge of the police and would shortly be bringing out two other books, one on combating racially motivated crime, and the other on legal aspects.

35. The expression "counter-violence" in paragraph 38 of the report, referred to the violent attacks in recent years on Nazi and racist demonstrations by militant anti-racist or anti-fascist groups and individuals, some of whom belonged to anarchist groups or networks and often appeared masked and armed with "street weapons".

36. Mr. MAGNUSON (Sweden), referring to questions on paragraph 47 of the report, said that the focus of the Act against Ethnic Discrimination and of the work of the Ombudsman against Ethnic Discrimination was the labour market. When the bill had been drafted, it had been reasoned that some kind of objective criterion was needed to determine whether or not ethnic reasons had prevented a person from being hired. The Act had been little used and was being reviewed in its entirety.

37. With regard to the meaning of "unlawful discrimination", the crime of unlawful discrimination had been introduced into Swedish legislation to bring it into line with the provisions of the Convention. It was for the courts to establish whether or not unlawful discrimination had taken place.

38. As to the reason for the recent decrease in the number of asylum seekers and refugees, Sweden, like other countries, had strict immigration laws, and many people, both job seekers and asylum seekers, were turned away unless humanitarian reasons for their admission could be proved. Mrs. Castilla Perez

had had to return to Peru because she had not been considered to be in need of protection as a refugee. Residence permits, once granted, were extended for as long as the persons concerned continued to live in Sweden. Integration had nothing to do with the extension or otherwise of a residence permit.

39. The report to the Committee was not published, but in Sweden official documents held by the public authorities were available to anyone on request. The Ombudsman against Discrimination was involved in the report only indirectly, in that he might submit information to the Ministry of the Interior which in turn would submit it to the Ministry of Foreign Affairs which was responsible for producing the report.

40. In addition to Sami schools, there were Finnish, German, English, French, Estonian, Jewish and Muslim schools, amongst others. In principle, anyone wishing to open a school could do so provided that the national curricula established in the School Act were taught at the school.

41. As to whether immigrants or people belonging to ethnic minorities reached the higher echelons of society, although there were no statistics on the question, there were two ambassadors with Sami backgrounds, as well as one member of the Government who had been born in Latvia and another who was a second-generation immigrant. Several members of Parliament had foreign backgrounds as did several in local government. In business the situation varied: one of the richest persons in Sweden was an Italian who owned most of Europe's bicycle industry, but for newcomers the situation was more difficult because they usually arrived without jobs and needed time to achieve success.

42. The Swedish State Church, which had been established in 1592, was to be abolished in 2000 by a new law which would place it on the same footing as other religions. The reason why people not belonging to the Church had to pay a Church tax was that in most communities, other than in Stockholm, the Church was responsible for the cemeteries. That situation would undoubtedly change under the new law.

43. Mr. WOLFRUM expressed his appreciation for the information concerning the Sami Parliament and in particular the criteria for registering as a Sami, which were in full conformity with both the Convention and a general recommendation by the Committee. Such a sophisticated catalogue of criteria had not been seen before, and it would be useful to have the information in writing for further analysis both in the Committee and elsewhere.

44. It was evident from the information given that the Swedish Government faced some kind of dilemma as far as the Finnish group was concerned, but it was difficult to understand why the newer arrivals should not be treated in the same way as the old community. As the issue was being looked into, it was to be hoped that all Finns in Sweden would receive equal treatment in the near future.

45. Questions had been raised regarding mother tongue instruction because it had been mentioned in paragraph 122 of the report. It would have been useful to have had a fuller account of the situation, including a comparison with previous years.

46. The interpretation given by Sweden to article 4 (b) was unacceptable. The Vienna Convention on the Law of Treaties provided that the interpretation of treaty provisions should be based on the terminology and words used. The words "shall declare illegal and prohibit organizations ..." were perfectly clear and it was not sufficient for the Swedish Government simply to make it very difficult for such organizations to function. Sweden's point that prohibition would constitute a limitation on freedom of association just as article 4 (a) constituted a limitation on freedom of expression was understandable. Nevertheless, the obligation accepted by the Swedish Government was to prohibit such organizations. The argument - which other Governments, too, had put forward - that such organizations should not be overemphasized because of their limited membership and activities was also understandable, yet it was important to bear in mind that in Germany it had taken the Nazi party only three years to increase its votes from 2 per cent to 25 per cent. While nothing comparable would ever happen in Sweden, the German experience showed that the argument was not really valid and it was sometimes necessary to ban small organizations before they acquired the political status that would make them much more difficult to deal with under criminal law.

47. Mr. GAFUROV said that his question about the definition of the word "minority" had been based on paragraph 8 of the report. He had taken it that the minority groups referred to therein, the Roma, the Sami and the "Tornedal Finns", would be the focus of the attention of the committee concerned. Paragraph 3, however, had referred to other minorities which were greater in number than the Sami and the Roma, which was why he had not been fully satisfied with the Swedish delegation's reply.

48. Mr. DIACONU said that, although there was no obligation for a State party to determine which minority groups or individuals lived in its territory or to include reference to ethnic origin on official or personal documents, the Swedish Government appeared to have decided that it only had three minority groups and he wondered whether it had asked other groups or individuals to identify themselves and, if so, why they did not appear alongside the Roma, the Sami and the Finns. Conducting a census which included questions about ethnic origin was not tantamount to discrimination provided such information was not put on personal files but was used to provide objective criteria.

49. In addition, whereas some immigrants became assimilated into society, history showed that the majority maintained their identity, and that identity should be recognized. That naturally involved a political decision, and affected countries other than Sweden, but he trusted that a solution would be found.

50. Mr. SHAHI asked whether the Swedish Government could take action on racist propaganda emanating from Sweden via the Internet.

51. Mr. RECHETOV said that although the Swedish Government's treatment of the Sami probably made for a more stable society, the Sami people living in other countries such as the Russian Federation and Canada probably enjoyed more preferential treatment. Compared with Norway's approach to the Sami people, which showed concern for the survival of their language, the Swedes

seemed to adopt a more legalistic, almost indifferent approach. In contrast to the Sami people in other countries, the Sami in Sweden might have to abandon any hope of retaining their traditional right to carry out economic activities on 25 to 30 per cent of Swedish territory.

52. Mr. MAGNUSON (Sweden) regretted that his delegation and Mr. Wolfrum could not reach an agreement on the interpretation of article 4, paragraphs (a) and (b). Sweden, through legislation, sought to combat any expression of racism but did so as any other State party should in response to its own perceived imperatives.

53. The Finns had every right to identify themselves as members of a national minority but the question remained whether Finnish should be declared an official language used in the public service. The matter required further study because of the language spoken by Tornedal Finns was a variant of Finnish and was written differently. Decisions were pending on whether to give new status to the three minority languages traditionally spoken in Sweden, i.e. those of the Roma, the Tornedal Finns and the Sami. He regretted that the Swedish treatment of the issue had not met with the satisfaction of the Committee.

54. Mr. PERKLEV (Sweden) said that individuals in Sweden who used the Internet to disseminate racist information could be prosecuted under the Penal Code. In fact there was currently such a case before a court in Sweden.

55. Mr. YUTZIS (Country Rapporteur) touched on the link between subjective and objective recognition of ethnic minorities. The Swedish Government's position on the issue was to its credit insofar as it respected the right of each individual to choose whether or not it identified itself with an ethnic minority. Such subjective recognition, however, should be accompanied by two forms of objective recognition. Firstly, efforts should be made by all States parties under the Convention to protect, promote and ensure the well-being of their minorities. Secondly, they should also provide the legal framework to formally recognize such minorities, and in the case of Sweden it was a logical consequence of action it had already taken.

56. The delegation of Sweden recognized that the Samis had the right to hunt and fish and to engage in reindeer husbandry. After the creation of the Sami Parliament however special authorization had apparently been withdrawn. Clarification was needed on that point.

57. From the Swedish report it was clear that vigorous but vain efforts had been made to improve the condition of the Roma people. Sweden saw the lack of improvement in their condition as a social and not a legal problem. Nevertheless the question remained as to why the Roma people lacked the motivation to improve their social condition. It was a question that not only Sweden but other countries, too, had to address.

58. Sweden's defence of democracy and the right to freedom of expression were very commendable. Nevertheless any democracy should defend itself against attacks, of a racist nature for example which threatened to undermine social cohesiveness.

59. Furthermore, Sweden had not entered any reservations to article 4 of the Convention, which condemned all forms of racist propaganda and called upon States parties to declare illegal and prohibit organizations which disseminated such information. It was hoped that Sweden would recognize the historical wisdom that informed the wording of article 4 since in the recent past, the Committee had witnessed a rise in the incidence of race-related situations, xenophobia and discrimination in most countries, even those with a good record in that regard.

60. Clarifying his statements about the two political parties in Sweden which had uttered very strong statements on immigration, he pointed out that at no time had he said that they were racist. The parties' hardline position on immigration should be taken as symptoms of a situation which the Swedish Government should take seriously. Although there had been a reduction in the extent of racist activity in the recent past it should be seen against the wider backdrop of the dramatic increase in such activities over the past 6 to 10 years. Thanking the Swedish delegation, he expressed the hope that answers to the points raised would be forthcoming in the next report.

61. The CHAIRMAN, commending Sweden's efforts to comply with its obligations under the Convention, said that the Committee looked forward to a resumption of its very useful dialogue with the State party.

62. The delegation of Sweden withdrew.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 4) (continued)

Israel

63. At the invitation of the Chairman, the members of the delegation of Israel took their places at the Committee table.

64. The CHAIRMAN, recalling the Committee's practice, commended by the General Assembly, of scheduling consideration of situations in States parties under its early warning and urgent procedure as adopted in 1993, said that the procedure, intended as a preventive measure, often involved responding to rapidly changing circumstances in States parties. He also drew attention to document CERD/C/324, paragraph 4, which provided that the Committee might also, at its discretion, schedule the consideration of other States parties at short notice - i.e. States other than those listed. Israel had been duly informed on 6 June 1997 of being scheduled for consideration and there was no justification for any assumption that removing Israel from the agenda under item 5 thereby removed it from consideration under item 4.

65. Any discussion of the Committee's action in scheduling specific States parties under item 4 should be placed within the appropriate context. Such discussion should be informed by the Committee's recent action in connection with other States parties, including Algeria, Mexico and the Russian Federation, and by its decision 3 (45) on racist acts of terrorism.

66. Mr. LAMDAN (Israel) said that he believed that Israel should not have been summoned to the Committee's meeting for consideration under its early

warning and urgent procedures. Nonetheless his delegation had come out of deference to the Chairman and the Committee even though thus far it had not been given any indication of the Committee's concerns, which he hoped would be set forth presently.

67. Mr. van BOVEN (Country Rapporteur) recalled some of the criteria developed by the Committee in 1993 to deal more consistently with the prevention of racial discrimination, including early warning and urgent procedures. The criteria warranting early warning and urgent procedures could include the presence of a serious, massive or persistent pattern of racial discrimination; a serious situation and a risk of further racial discrimination; and the presence of a pattern of escalating racial hatred and violence, or racist propaganda or appeals to racial intolerance by persons, groups or organizations, notably by elected or other officials. Israel had been put on the agenda in the light of those criteria. Israel was only one of between 10 and 15 countries which had been in circumstances warranting early warning and urgent procedures in recent years. Those procedures were distinct from the regular monitoring procedure based on periodic reports. The Committee was grateful for Israel's decision to attend and to further the dialogue on the situation.

68. The Committee was neither a tribunal nor a political body, but a monitoring body assessing States' implementation of the Convention and advising them; that might also apply to situations requiring preventive action. Country rapporteurs had no mandate to speak on behalf of the Committee; their role was to conduct research and to report on their findings and also give views and advice in the hope that it would be of benefit to the Committee.

69. Referring to the Committee's concluding observations adopted on 18 August 1994 (A/49/18, paras. 82-91) and its decision 3(45) of 1994 (A/49/18, para. 109 and Annex III) and statement of 6 March 1996 (A/51/18, Annex III) on terrorist attacks, he said that the Committee was on record as fully supporting the Middle East peace process and totally rejecting and condemning all racist terrorist acts. The current stalemate in the peace process and continued perpetration of racist terrorist acts and of other acts of racial violence were of grave concern to the Committee, touching at the very heart of the Convention.

70. It was hoped that the Middle East peace process would be guided by the principles enshrined in preambular paragraph 10 and articles 2, paragraph 1 (e), and 7 of the Convention. Furthermore, article 4 was an imperative prescription in combating racist terrorist acts and other acts of racial violence.

71. It was crucial that the peace process be revived as a pledge of good faith on all sides and that all agreements reached be observed and implemented. Compliance with the Convention should be considered an essential ingredient of the peace process. While there was a strong movement for peace on both sides, there were also extremist persons, groups and organizations on both sides that wished to destroy the peace process, flout the basic

principles of human rights, including those enshrined in the Convention, incited, propagated and practised racial violence and committed racist terrorist acts.

72. In its concluding observations of 18 August 1994, CERD had welcomed the outlawing by Israel of certain extremist Jewish groups as terrorist organizations and indications that similar action would be taken against other terrorist groups but it seemed that those groups, and others, were continuing their racist activities. That was a matter of deep concern in the light of article 4 of the Convention. By the same token the racially motivated terrorist acts for which the Islamic Resistance Movement (Hamas) had claimed responsibility, and the content of the Hamas Charter, which perpetuated racist stereotypes against Jews, promoted racial hatred and incited to violence were also a cause for grave concern. In the light of article 4 of the Convention and the Committee's decision 3(45), the Committee might consider appropriate recommendations with regard to such organizations, including their international ramifications.

73. He further drew attention to the Committee's 1994 concluding observations regarding the Israeli Government's settlement policy in the occupied territories as an obstacle to peace and the enjoyment of human rights by the whole population in the region. With the expansion of the settlements and the lifting of the freeze on settlement activity, the issue had recently become a source of increasing concern and tension.

74. The Palestinian suicide bombings in Jerusalem, which should be condemned in the strongest terms, had again led the Government of Israel to the closure of the occupied territories, with devastating effects on the Palestinian inhabitants. The Director-General of the International Labour Office (ILO) had stated in response to similar past measures that there was no evidence of the effectiveness of those stringent measures against terrorism, and the resulting economic pressure could only increase the population's resentment. In the same vein, Uri Avnery, leader of the Israeli peace movement Gush Shalom, had written in the International Herald Tribune on 8 August 1997 that it was "naive" to think that the closure would isolate the terrorists, predicting a major outbreak of violence, led by religious fanatics on both sides, bringing a political disaster and chaos to the whole region.

75. Mr. ABOUL-NASR said the Committee could not remain indifferent to the recent measures taken by the Israeli Government and their effect on the peace process and on the implementation of human rights in general. That form of collective punishment was contrary to the Convention and to the agreements under which the occupied territories were governed. The measures would not help the achievement of peace based on justice. While there was no justification whatsoever for terrorist attacks, such acts had not occurred in a vacuum, but had followed a long process of measures taken by the Government, particularly the new Government, during the past year, including the digging of a tunnel near a mosque and the erection of a shrine - now visited by extremist groups - to the criminal who had massacred the Palestinians praying at the Tomb of the Patriarchs. While the Israeli Government had condemned that horrible act, it had left wounds in all Muslim countries which could not be easily forgotten. There were also the building of settlements on Arab

lands in the occupied territories and the destruction of homes allegedly built without a permit; both those measures had been condemned by General Assembly resolutions in 1997.

76. Eminent Israelis had recently expressed strong condemnation of the recent collective punishment measures and the extent to which they affected the peace process. They had called on the Government to rescind those acts, which were making life difficult for the Palestinians and, even more importantly, were playing into the hands of the extremists. The excuse of security was a poor one; no one could guarantee 100 per cent airtight measures against terrorism, and even the Israeli Government had been unable to stop the assassination of its own Prime Minister. According to the CNN television network, Prime Minister Netanyahu did not know who the suicide bombers were or where they had come from; why, then, was the Government punishing the entire Palestinian people? The Committee should make a clear pronouncement on the situation. The Palestinians could not move freely, go to their hospitals or to their jobs; their assets were frozen in the banks, and they were losing $9 million a day as a result of the closure. Extremists should not be encouraged to repeat terrorist acts through such measures as the closure; violence bred violence.

77. Mr. VALENCIA RODRIGUEZ said that even though the Committee was not a political body, the political context underlying the situation in Israel was relevant to the issues of racial discrimination within its purview, and warranted action under its early warning and urgent procedures. The Committee's first obligation was to ask the protagonists in the Middle East to continue the peace process and avoid any acts that would aggravate an already difficult situation. It should also condemn the wave of violence sweeping over the region, part of which originated in racial and ethnic hatred.

78. Mr. RECHETOV said the State party was to be commended for coming to hear the Committee's views on the matter, despite its very serious doubt as to the need for such a meeting; the Committee should ensure that the meeting did not provide a pretext for any headlines that might impede a solution. He supported the unequivocal condemnation of terrorism in all its different forms - national; international, without the direct participation of States; and State terrorism.

79. For many years, the General Assembly had addressed the question not only of condemning terrorism but also of eradicating those forms of terrorism and violence which arose from poverty and despair and led some people to sacrifice lives, including their own, with a view to bringing about radical changes. That could be applied to acts of terrorism occurring on various sides in the Middle East. Tensions had recently escalated there, as a result of the attempts by the Israeli authorities to change the demographic composition of the territory, a situation covered by the Geneva Conventions.

80. The Committee should give due thought to what the result of the present meeting should be; yet another decision would not have much impact. Rather, the Committee's views should be communicated to the Government so that they could be taken into account in the restoration of the peace process. The

Committee should promote the resumption of relations between the Palestinians and the Israelis and should avoid taking any hasty action that might prevent such an outcome.

81. Mr. de GOUTTES commended the Israeli delegation for appearing before the Committee despite its reticence about the relevance to Israel of the early warning procedure. Regarding the applicability of the Convention to the occupied territories, in its concluding observations of August 1994 the Committee had reaffirmed its position of principle that, as Israel was a party to the Convention, the Committee was competent to examine the manner in which Israel was fulfilling its obligations under the Convention with respect to everyone falling under the jurisdiction of Israel, including all persons living in the territories occupied by Israel.

82. He would like the delegation to address information received from the International Federation of Human Rights (IFHR) and the Association for Civil Rights in Israel (ACRI); it was accepted that the Committee could draw on sources from non-governmental organizations (NGOs). According to those sources, there were several subjects of concern. The first was the controversial "Handling Claims" draft law, which was purportedly aimed at reducing, on a discriminatory basis, the possibility of compensating those killed or wounded by security forces in the occupied territories, and also at a disturbing expansion of the notion of "combatant activity", which would exempt the Israeli defence forces and other security troops from any civil liability. According to IFHR, ACRI had taken a critical stand against the draft law.

83. The second subject of concern had to do with Israeli policy towards residents, which had been amended retroactively and now provided that Palestinians who had not lived continuously within Jerusalem city limits, even if their residence had been interrupted for less than seven years, would be refused an extension of their residents' status. That meant that some of them, even some living just a few kilometres from the city, would already be victims of the new policy. Also of concern was the intention, announced by the Minister of the Interior, to replace the identity cards of all citizens and residents within the next six months.

84. Another problem on which he sought a reply concerned the difficult, even inhuman prison conditions of Palestinian inmates, who were not always assisted by the lawyers of their choice and experienced difficulties in obtaining permission for visits from their families. There were concerns about the violence and excessive use of force by the Israeli police; discrimination between Jews and Arab citizens of Israel, including Bedouins, in terms of schooling, housing and employment; and the very difficult working conditions and poverty of foreign migrant workers, who according to ACRI numbered 100,000.

85. Mr. YUTZIS regretted that there were still no results of the investigation into responsibility for the extremist attack committed several years earlier in Buenos Aires not just against the Jewish community but against the Argentine community as a whole, since many Argentines had died in the attack. The borderline between the political and the humanitarian was not

always clear; in the present discussion, he would emphasize the humanitarian aspects. In the history of extremism, a traditional tactic in extremist circles, was to follow the motto "the worse it is, the better".

86. The innocent victims caught in the middle of a conflict were not responsible and should not pay the consequences, but that was often what happened. He wondered what Israel thought could be done about those who said, "the worse it is, the better", and the fact that in the present situation, the worst consequences were usually suffered by those who could not defend themselves.

The meeting rose at 1 p.m.

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Fifty-first session

SUMMARY RECORD OF THE 1226th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 11 August 1997, at 3 p.m.

Chairman: Mr. BANTON

CONTENTS

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (continued)

Israel (continued)

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Initial, second and third periodic reports of the former Yugoslav Republic of Macedonia

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The meeting was called to order at 3 p.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 4) (continued)

Israel (continued)

1. At the invitation of the Chairman, the members of the Israeli delegation resumed their places at the Committee table.

2. Mr. WOLFRUM welcomed Israel's wish to enter into a dialogue with the Committee and make use of its services, as was shown by its dispatch of a high-level delegation, one of whose members had taken the trouble to come from Jerusalem. He said that the Committee must do everything to encourage the pursuit of the peace process and, to that end, it must request that all the agreements concluded between the State of Israel and the Palestinian Authority should be applied in full, but that it must, above all, condemn terrorism unreservedly, whatever its source, not only because in Israel it only sought to sabotage the efforts to establish peace, but also because, in any event, it could never be justified. The Committee should also condemn the collective reprisals taken against the Palestinian population, in particular the freezing of Palestinian assets, since that was an illegal measure taken unilaterally by a State and was in no way comparable to the coercive action (or "sanctions") which States Members of the United Nations might decide upon collectively under international law. Finally, it should offer to help Israel by all the means at its disposal to re-establish a climate favourable to peace and to bring an end to the escalation of tension.

3. Mrs. SADIQ ALI fully supported the remarks of Mr. van Boven and the views of several other members of the Committee who had taken the floor during the debate. She hoped that Israel would take account of the opinions expressed in the course of the fruitful dialogue that had been established.

4. Mr. SAREL (Israel) recalled that, prior to the major change of direction represented by the Israeli-Palestinian agreements, the West Bank and Gaza had not been subject to Israeli law, but had been administered by the military authorities in accordance with the rules of international law. Since then, the Palestinians, acting in full autonomy, had made, interpreted and applied their own laws, even if some of those laws were unfavourable, or even discriminatory, to Israel, such as the order declaring it to be a punishable offence for a Palestinian to sell his land to a Jew.

5. Since Israel had fulfilled its obligations under the agreements concluded with the Palestinians, the exceptional treatment represented by the early warning and urgent procedures did not apply. When the Committee examined Israel's periodic report in accordance with its normal procedure, it would be able to judge whether Israel had presented an honest picture of the situation, including the shadowy areas and the problems which, like any other country, it had. It would also see that Israel had made enormous progress along the path to democracy, as was clear from the report of the Association for Civil Rights in Israel, even though in other respects it was highly critical. In presenting its periodic report, Israel would make no attempt to cast a veil over the problems of migrant workers or the real gap that existed

between the Israeli and Arab communities. An account would also be given of the considerable legislative changes made and the continuing attempts to combat discrimination in employment and to respect human dignity and liberties.

6. Mr. LAMDAN (Israel) said that the members of the Committee, in taking a position in favour of the peace process and the application of the Oslo Accords, were preaching to the converted, since what Israel wanted was peace. The difficulties arose from the fact that peace required the Accords to be applied by each of the two sides and that meant, in particular, that the Palestinian Authority should make a serious attempt to eradicate terrorism in accordance with its undertakings. Moreover, it could only harm the cause of peace if an essentially political situation that had arisen from the conflict of two national identities unfortunately attached to the same piece of land were to be seen in terms of racism or religious intolerance. Bomb attacks in Jerusalem were not racist in character but were purely and simply political provocations intended to achieve the worst possible consequences. In fact, the Committee was not a political body and should confine its action to the non-political sphere. It would achieve nothing except sensationalism by resorting to urgent procedures, at a time when the sponsors of the peace process were seeking to relaunch that process. On the other hand, in its consideration of Israel's periodic report, the Committee could promote the peace process by encouraging the two parties to the dispute to respect the Oslo Accords and to fulfil the obligations that they had willingly entered into under those Accords.

7. The CHAIRMAN stated that it was in no way the intention of the Committee to examine the situation in Israel as a whole. Nevertheless, any attempt to carry out a proper examination of the application of the Convention in that country must take account of the national context. Misunderstandings often arose as to the competence of the Committee, since a large number of States interpreted racial discrimination in a narrower sense than the meaning given in the Convention itself. It was nevertheless a fact that the Committee must act in accordance with the Convention in examining its application by the States parties.

8. Mr. SHAHI endorsed the arguments put forward by Mr. van Boven in support of resort to the urgent procedure, which was justified in view of the explosive nature of the situation in Israel. He too pointed out that the Committee's action must be based on the actual text of the Convention.

9. He also condemned the unjustifiable collective reprisals taken against the Palestinian population and the extremely harsh measures taken by Israel against the Palestinian Authority, such as the delay in the reimbursement of taxes, duties and dues which it collected and which it was obliged to pay over to it. He did not believe that the Committee had shown itself to be partial, but that it had, on the contrary, acted in the interest of both parties. In the same spirit, the Committee should urge the Palestinian Authority to take effective steps to prevent acts of violence and terrorism and should exhort Israel to end collective sanctions, pay over the taxes, abandon plans to build at Har Homa - the main cause of the deterioration in relations between the parties concerned - and stop the confiscation of land.

10. Mr. ABOUL-NASR welcomed the efforts made by the Israeli delegation to avoid needless conflicts with the Committee. It had, in particular, avoided the use of the term "Judea and Samaria", preferring instead "the West Bank and Gaza", and had also admitted quite frankly that there existed obstacles to the application of the Convention. He assured the Israeli delegation that it was by no means the intention of the Committee to play the game of the extremists on both sides, nor to encourage them to sabotage the peace process, but quite the contrary in fact. However, if the Committee really wished to help Israel to take the measures necessary to apply the Convention, then neither could it remain silent: it must express its opinions, just as some highly respected NGOs such as Amnesty International or Middle East Watch had done.

11. He pointed out that Israel had taken the liberty of selectively applying certain rules of international law, in particular those contained in the Geneva Conventions. While denying any attempt to interfere, he nevertheless doubted whether it could be claimed that the establishment of settlements, the confiscation of land or the refusal to let some refugees return to their country were in conformity with internationally recognized rules. It was his hope that the Israeli delegation could soon provide concrete proof that the humiliations of all kinds daily inflicted on the Palestinians were a thing of the past. He added that, as long as a Palestinian did not have the right to return to his country, while a Russian Jew automatically obtained Israeli nationality on arrival, it would be difficult to assert that Israel was totally exempt from racism. Nevertheless, the exchanges of views that had just taken place led one to believe that Israel was on the right course.

12. Mr. GARVALOV welcomed the constructive dialogue that had been established between the Committee and Israel and noted with satisfaction that the circulation of information between the Israeli authorities and the Committee had improved. He believed that the conflict between Israelis and Palestinians was now a political problem which therefore necessarily required political solutions, although it had probably originally been a racial problem bringing two peoples on the same land into conflict. He shared the views expressed by Mr. van Boven regarding early warning and urgent procedures. In addition, he believed that the Committee should, above all, seek to encourage the two parties to respect the Oslo Accords and carry out the bilateral undertakings contained in those Accords.

13. Mr. SABEL (Israel) repeated that the problems arising from the Israeli-Palestinian conflict were of a political nature and pointed out that Gaza had ceased to be under Israeli administration since the conclusion of the Oslo Accords. He stated that the Israeli Government would give careful consideration to the views of the Committee and would take full account of them in its next report.

14. Mr. LAMDAN (Israel) said, in response to a question from a member of the Committee, that the Israeli-Palestinian conflict had been a political conflict from the very beginning, since it had its origin in the period that had followed the collapse of the Ottoman Empire, at the end of the nineteenth century, and in the advance of the nationalist movements that had then appeared in Europe and in the Middle East, including those among the Jews and the Arabs.

15. Mr. van BOVEN also expressed satisfaction at the quality of the dialogue that had been established between the Committee and the Israeli delegation, despite the points of disagreement that still existed between them, in particular regarding the question of whether the Committee could take early-warning and urgent procedures in respect of Israel and the question of the area of application of the Convention. He pointed out that there were specific criteria laid down on this matter and that the Committee applied them scrupulously. He emphasized that the Committee was not treating Israel any differently in that respect, since procedures of that nature had already been applied in the case of a number of countries. With regard to the definition of racial discrimination, he stated that the Committee had always based its actions on article 1, paragraph 1 of the Convention.

16. He admitted that the Israeli-Palestinian conflict was of a political nature, but maintained that it also had racial dimensions, recalling in this respect that Mr. Lamdan himself had stated, in a letter sent to the Chairman of the Committee, that it was a national conflict between two peoples. He believed that the questions raised by this conflict came within the scope of the Convention in view of the existence of clear ethnic and national differences between Israelis and Palestinians. He considered that the provisions of article 4 of the Convention could guide the search for solutions. Through the dialogue with Israel, the Committee, which was careful to refrain from any interference in the internal affairs of the country, was seeking to improve the state of relations between the Israelis and the Palestinians with all the means, however modest, at its disposal.

17. The CHAIRMAN thanked the Israeli delegation.

18. The Israeli delegation withdrew.

The meeting was suspended at 4 p.m. and resumed at 4.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Initial, second and third periodic reports of the former Yugoslav Republic of Macedonia (CERD/C/270/Add.2; HRI/CORE/1/Add.83)

19. At the invitation of the Chairman, Mr. Maleski, Mr. Petreski, Mr. Todorovski, Mr. Verusevski, Mr. Celevski, Mr. Mostrov, Mr. Dimitrov, Mrs. Gorgieva and Mrs. Stefanovska (The former Yugoslav Republic of Macedonia) took places at the Committee table.

20. Mr. MALESKI (The former Yugoslav Republic of Macedonia) recalled that his country had acceded by succession on 20 September 1993 to the International Convention on the Elimination of All Forms of Racial Discrimination, but that Yugoslavia, of which it had originally been part, had become a party to that instrument as long ago as 2 October 1966. After the break-up of Yugoslavia, the former Yugoslav Republic of Macedonia had initiated a process to develop democracy, the rule of law and a market economy, and it was within that context that it had adopted a number of basic legislative texts that had brought its domestic law into line with international norms.

21. He said that there was a long tradition in his country of respect for the rights of national minorities, which had been very widely recognized and protected by the collectivist system previously in force in the former Yugoslavia. He pointed out, however, that under that regime the country had merely confined itself to ratifying international human rights instruments, but without giving individuals the right to bring claims before international bodies responsible for monitoring the effective application of the instruments in question. The former Yugoslav Republic of Macedonia, however, was now seeking to establish a system that protected the rights of the individual and guaranteed within that framework the rights of national minorities. Thus, it had ratified the Optional Protocol to the International Covenant on Civil and Political Rights and the European Convention on Human Rights and intended to make the declaration envisaged in article 14 of the Convention with a view to enabling individuals, should the need arise, to address communications to the Committee.

22. In view of the limited resources at its disposal, the former Yugoslav Republic of Macedonia could do no more than pursue steadfastly a progressive policy with a view to developing respect for fundamental human rights, including those of the members of the national communities, but it was aware that it would be difficult to reconcile the integration of all its citizens and the development of their individual liberties with respect for their distinctive identities. The declaration on the promotion of inter-ethnic relations in a spirit of tolerance, dialogue, mutual respect and confidence, adopted by the Assembly on 18 March 1997, was intended to establish a fair balance between those two conflicting imperatives. The former Yugoslav Republic of Macedonia attached particular importance to the concept of human rights: it hoped, by raising the status of the individual, to avoid the development of excessive feelings of ethnic affiliation which were likely to have harmful political consequences, in particular by encouraging intolerance. He also pointed out that ethnic extremism was a marginal phenomenon in the country, whose inhabitants, on account of their history, were well aware of the importance of human rights and, in particular, of the rights of minorities for the stability of civil society. In practice, the national minorities living in the country enjoyed triple protection - political, international and legal - which guaranteed them the right to express, promote and freely develop their identity and their particular ethnic characteristics.

23. He emphasized that the report under consideration only dealt with questions directly concerning racial discrimination. In the first part of that report, the emphasis had been placed on the positive results obtained as a result of the measures to increase the participation of the members of minorities in various areas of activity: the civil service, the legal profession, education, culture and information. It was worth pointing out that apartheid and any other form of racial segregation were prohibited and proscribed by the law.

23 bis. He said that the Judicial Council of the Republic, which consisted in part of persons from the national minorities, had no judicial functions, but participated in the appointment of judges and disciplinary decisions concerning members of the judiciary. He added that the draft code of civil procedure, some of whose provisions had been included in the report, sought inter alia to give any party engaged in legal proceedings the right to express

himself in his own language. However, the draft code had not yet been adopted by Parliament. He explained, for purposes of clarification, that the term "nationality", as employed in the Constitution of the Republic, was the equivalent of the term "minority" which was generally used in the international instruments.

24. Shortly after the report under consideration had been drawn up, the former Yugoslav Republic of Macedonia had adopted a law establishing a mediator, thereby supplementing the arrangements for protecting the freedoms and rights of citizens as set out in the report and, in fact, that mediator had already begun his activities. The country had ratified the European Convention on Human Rights, thereby acceding to the European system for the protection of rights and freedoms, as well as to the Framework Convention for the Protection of National Minorities.

25. The former Yugoslav Republic of Macedonia gave as a matter of course very high priority to the defence and promotion of human rights in the activities of its democratic institutions and in the action of the State by ensuring that due account was taken of the particular characteristics of its citizens. It was seeking to act in that field by encouraging transparency at the national and international levels and promoting cooperation with the relevant international organizations.

26. Mr. RECHETOV (Country Rapporteur) noted with satisfaction the presence of a high-level delegation, which led to expectations of a fruitful dialogue.

27. The former Yugoslav Republic of Macedonia, which had become an independent and sovereign State following the collapse of Yugoslavia, was going through a difficult economic situation which was partly the result of the sanctions applied to Serbia. It appeared that some of the problems between the former Yugoslav Republic of Macedonia and the neighbouring countries had been settled - although that was not to express an opinion on questions of the territorial integrity of the State. The country contained many ethnic groups and national minorities which, most often, had their own cultural identity and, for example, frowned upon mixed marriages.

28. It should be noted that in Yugoslavia the rights of the group were given priority, while in the former Yugoslav Republic of Macedonia the emphasis was placed on the rights of the individual, although undoubtedly a balance needed to be struck between the two.

29. Referring to the report, he noted that according to the new Constitution the former Yugoslav Republic of Macedonia was "the State of the Macedonian people" and no longer, as in the past, "the State of the Macedonian people and the Albanian and Turk minorities". He hoped that clarification would be provided on that point. He welcomed the fact that the country had adopted new legal instruments that protected human rights and that several laws - such as the Act on Internal Affairs, the Act on Enforcement of Sanctions, the Act on Political Parties, the Act on Secondary Education, the Act on Social Organizations and Citizens' Associations and the Criminal Code - took account of the Convention by prohibiting any action intended to encourage hatred and intolerance and all forms of discrimination. He urged the Government to include in the next report an account of the practical effects of those

instruments, indicating cases in which individuals had been able to assert the rights protected by these instruments before the courts. In addition, he would like to have additional information on article 118 of the Constitution, which stipulated that international agreements ratified by the country formed part of the domestic legal system and could not be changed by law, thereby making many Conventions directly applicable within the country.

30. While noting that the Government was aware of the fact that the principle of non-discrimination was not sufficient in itself to protect the identity and distinctive nature of the minorities, he expressed the hope that the Government would continue to take concrete measures in those fields and that it would inform the Committee of them. In view of the demographic composition of the country and the size of its various ethnic groups, the measures taken to ensure that those groups were properly represented in the State administration had produced good results. Progress still remained to be achieved in other sectors, particularly in the army, the proportion of Albanians among senior officers being lower than among junior officers. However, it was a cause for congratulation that 14 per cent of the first generation of officer cadets at the Military Academy were members of minorities. Likewise, national minorities had increased their representation in the Ministry of Foreign Affairs and the members of those minorities occupied for the most part senior posts in the Ministry of Education. Finally, the national minorities were well represented among the judges of the various tribunals.

31. As far as education was concerned, it was at the primary level that the situation was most satisfactory for the members of national minorities. He regretted, however, that the members of some national minorities had a lower level of attendance at secondary school on account of the shortage of available means of transport and of the fact that, within certain minorities, girls were not encouraged to pursue secondary education. In higher education and more particularly at the University of Skopje, several subjects were taught in the Albanian and Turkish languages. Formerly, many members of the Albanian minority had preferred to study in Kosovo, but that had now become more difficult. In 1995 a free Albanian university had been established in Tetovo, which had given rise to controversy and even to conflicts, and he wondered what measures the Government was intending to take in order to solve that problem. While recognizing that the language question was sometimes exploited by extremists who claimed before international bodies the right to use their own language in education even though they did not use that language in their own homes, he was also aware that education lay at the heart of the concerns of the national authorities and believed that it would be a good idea to increase the opportunities for education in languages other than Macedonian.

in practising their religion. He expressed the wish therefore that the Government would include in its next report fuller information on those points as well as on the economic and social situation of the minorities.

33. On the whole, the report contained extremely useful information that showed that the Government, despite difficult circumstances, was taking measures to apply international human rights standards. It should be encouraged to pursue its efforts with a view to increasing the representation of the minorities in national life and to ensure the fuller exercise of their rights. Mr. Gligorov himself had declared in November 1994, when assuming his responsibilities as President of the Republic, that the question of the rights of the minorities, which had demonstrated their political maturity, could only be settled within the Republic and by means of direct participation by the minorities in public affairs.

34. Mr. VALENCIA RODRIGUEZ asked, with regard to the table on page 17 of the report indicating the breakdown of the population by ethnic affiliation, why the number of inhabitants of the municipality of Debar had not been fully listed.

35. He wished to know whether there were cases of the application of article 14 of the Act on Political Parties (para. 3) or of articles 137 and 417 of the Criminal Code and would like to have additional information on the subject. With regard to the prohibition mentioned in article 22 of the Act on Public Information (para. 8), he wondered whether its application was compatible with the inviolability of private correspondence, which was presumably guaranteed by other texts. He inquired whether there had been cases, among those alluded to in paragraphs 10 and 11 of the report, in which the International Convention on the Elimination of All Forms of Racial Discrimination had been invoked. The measures which had actually been taken in application of article 1, paragraph 4 of the Convention in order to increase the representation of the minorities in the State administration (paras. 14-22), in particular, in the most sensitive ministries (defence, internal affairs, foreign affairs and education), could serve as a model for other countries. As far as education was concerned, it would be interesting to know what measures had been taken to overcome the difficulties mentioned in paragraph 20. The measures intended to increase the number of students belonging to national minorities in secondary schools were to be commended and should be strengthened (paras. 89 and 90).

36. He wondered whether, with regard to article 3, there were cases in which article 403 of the Criminal Code had been applied and whether, with regard to article 5, the Constitution guaranteed the right of appeal not only against first-instance decisions, but also against decisions on appeal and whether such decisions were binding (para. 27). He added that the measures of local

38. Turning to consideration of article 7, he welcomed the fact that human rights questions were now included in the curricula of primary and secondary education (paras. 99 and 100). It was true that it was not always essential to have legal rules to guarantee the circulation of information on efforts to combat racism, since administrative measures were often sufficient, and it was also true that the existence of different ethnic communities, far from being a handicap, was a source of great richness for a country.

39. Mr. DIACONU said that the former Yugoslav Republic of Macedonia was a young country that had escaped by a miracle from the war in the former Yugoslavia. It was clear that the primacy given to the rights of the group, as far as human rights were concerned, had given rise to political claims and to conflicts that had led some countries in the region to give priority to the rights of the individual in the bilateral conventions that they had recently concluded.

40. The report gave a very full picture of the application of the provisions of article 4 in the former Yugoslav Republic of Macedonia, where the offences of disseminating propaganda promoting racial discrimination, spreading hatred and infringing the freedoms and rights guaranteed by the Constitution were punishable by law in a way that could only be described as exemplary. Similarly, the demographic data seemed to indicate positive trends in education since the number of schools and pupils was increasing. The Government was anxious to increase the number of representatives of the various minorities in the administration, public services and education, although the number of such representatives did not yet reflect the numerical size of the groups concerned within the population as a whole and there was therefore still room for improvement. With regard to local self-government (para. 49), the former Yugoslav Republic of Macedonia was well ahead of its neighbours.

41. However, a few remarks still needed to be made. In education the number of Albanian secondary schools and pupils did not appear to match the size of the Albanian population in the country (p. 32). Furthermore, the number of inhabitants of unknown origin (about 70,000) and of persons without citizenship (about 20,000) seemed much too high given the size of the population as a whole (p. 17 of the report). The authorities should ensure that that deficiency was remedied during the next census, when explanations should also be provided for the failure to count all the inhabitants of the municipality of Debar.

42. It was his opinion that the former Yugoslav Republic of Macedonia, through its legislation and the various measures it had adopted, was a testing ground of constructive measures and a model to be followed in a region that was not short of bad examples.

Furthermore, the Serbs had not i itially been included among the major nationalities listed in the preamble to the Constitution and he wondered whether that omission had now been corrected. He also inquired about the role of the Judicial Council of the Republic, consisting of seven members, two of whom belonged to national minorities.

44. He wished to have exact figures on education provided in the language of the various minorities, as mentioned in paragraph 85 of the report. He regretted that no mention had been made of the question of establishing an Albanian university or of the difficulties encountered in implementing that project, which had been approved by three municipalities, including Debar.

45. He also regretted the lack of information concerning the situation of Roma in the country: did the children of that minority receive education in the Roma language; what position did Roma occupy in the administration and in the economic and social life of the country, and what measures were being taken to improve their situation?

46. Mr. de GOUTTES also drew attention to the special importance of welcoming a new State Party to the Convention and examining its initial report, the more so as the report submitted was very full, a large and high-level delegation had come to present it and the report had been usefully supplemented by an oral account.

47. The report of the former Yugoslav Republic of Macedonia contained a great deal of useful and detailed information on the often original measures taken in application of article 4 of the Convention, including the Act on Telecommunications, which prohibited the dissemination of incitement to hatred or intolerance (para. 8), the Act on Enforcement of Sanctions, which must be applied impartially and without discrimination (para. 9), the Act on Tribunals, which stipulated that no discrimination was permissible in the appointment of judges, the measures taken to broaden the representation of minorities in the State administration (para. 14), and the number of hours of television and radio programmes broadcast in the languages of the national minorities (para. 22). Such information was rarely made available to the Committee in such detail.

48. However, a reading of the report did raise several questions and he wondered, first of all, whether any associations had been banned in application of the Act on Social Organizations and Citizen's Associations, as mentioned in paragraph 5. It was also a cause for regret that no information had been provided on the complaints, prosecutions and rulings given in application of articles 137 and 417 of the Criminal Code (para. 6).

49. With regard to paragraphs 20 and 90 of the report and of the reasons

50. Furthermore, without wishing to deny the need to limit the right to move freely in border areas, he wished to know the extent of the area in which such measures applied.

51. In conclusion, he asked whether the former Yugoslav Republic of Macedonia was planning to make the declaration mentioned in article 14 of the Convention, independently of the declaration that that country could make under the European Convention on Human Rights, which established a more limited jurisdiction than the International Convention on the Elimination of All Forms of Racial Discrimination, which dealt not only with civil and political rights but also with economic, social and cultural rights.

52. The CHAIRMAN pointed out that the Government of the former Yugoslav Republic of Macedonia had announced that it was planning to make the declaration mentioned in article 14 of the Convention.

53. Mr. van BOVEN urged the Government of the former Yugoslav Republic of Macedonia to pursue its efforts to ensure proper representation of the Albanian, Turkish, Roma and other minorities in all sectors of the State administration.

54. The report before the Committee was extremely useful insofar as it provided a picture of the legal framework established in the country so as to guarantee the elimination of all forms of racial discrimination, but it did not provide sufficiently full information on specific cases of the application of those legal texts, particularly in the fields of employment and education. It would also be useful to have specific information on the application of article 6 of the Convention.

55. It might perhaps be advisable to establish a national body responsible for promoting the principles set forth in the Convention and, in fact, the Committee had already adopted a recommendation on the subject (general recommendation XVII). A council responsible for ethnic relations did exist in the country, but it did not appear to be very energetic. He suggested that it might be reactivated with a view to encouraging the application of the principles of the Convention, while in the field of information (para. 101) it might perhaps be useful to establish a programme on human rights in general.

56. He welcomed the intention of the former Yugoslav Republic of Macedonia to make the declaration mentioned in article 14 of the Convention and called upon the country to ratify the amendment to article 8, paragraph 6, so that the expenses of the members of the Committee would be financed from the regular budget and no longer by the States Parties, in accordance with the recommendation of the General Assembly.

The meeting rose at 6 p.m.